

LAFCO Meeting

Date: October 11, 2006

TO: LAFCO

FROM: Neelima Palacherla, Executive Officer *NP*
Dunia Noel, LAFCO Analyst *DN*

SUBJECT: **LAFCO'S AGRICULTURAL MITIGATION POLICIES**
Agenda Item # 5

FOR INFORMATION ONLY

No final action on the policies will be taken.

DEVELOPMENT OF DRAFT AGRICULTURAL MITIGATION POLICIES

Background

In February, LAFCO held a planning workshop that included a presentation by the Deputy County Agricultural Commissioner on Agriculture in Santa Clara County and LAFCO discussed its role in preserving agricultural lands. LAFCO, at its April 2006 meeting, directed staff to draft agricultural mitigation policies for LAFCO proposals that would result in the conversion of prime agricultural lands to urban uses in order to ensure that LAFCO's agricultural mitigation expectations and requirements are clear to applicants, cities, special districts and affected property owners. Staff was directed to prepare the policies for the Commission's consideration and approval in the Fall of 2006.

Review and Comment on Draft Policies

The Draft Agricultural Mitigation Policies (See Attachment A for the Draft Policies and the cover letter) were circulated to cities, special districts, the County, environmental groups, farming interests and other interested parties and individuals on August 14, 2006, for review and comment. The Draft Policies were also posted on the LAFCO web site. A workshop was held on August 28th to discuss the Draft Policies and take comment. Staff from several cities, special districts, the County, as well as representatives from conservation groups and local developers attended the workshop. (See Attachment B for list of workshop attendees)

As of this date, we have received written comments on the Draft Policies from the following agencies, organizations, and individuals:

1. City of Gilroy (3 letters)
2. City of Morgan Hill (1 letter and 1 staff report)

3. City of San Jose
4. City of Sunnyvale
5. Committee for GreenFoothills
6. Friends of the Coyote Valley Greenbelt (FROG)
7. Greenbelt Alliance
8. Santa Clara Valley Audubon Society
9. Save Open Space Gilroy
10. Bingham McCutchen, LLP (representing prospective project)
11. Home Builders Association of Northern California
12. Jim Foran (personal views, not endorsed by the OSA)
13. Coyote Housing Group, LLC
14. Midpeninsula Regional Open Space District
15. W. Rocke Garcia, Blackrock
16. Patrick Congdon, (personal views, not endorsed by OSA Board)

Copies of all of the above comment letters are included in Attachment D. Staff has met with and/or has had telephone conversations with several of these groups and individuals to further discuss and address issues.

Request for Additional Time to Review and Comment and Address Issues

One of the greatest concerns expressed by affected agencies at the workshop was the proposed timeline for adopting the Draft Agricultural Mitigation Policies. Affected agencies and several stakeholders requested additional time to review the policies in order to provide thoughtful comments to LAFCO and its staff. Since the August workshop, LAFCO staff has received many comment letters, some of which identify issues that require further consideration by LAFCO staff. **Therefore, this report is for information only and not for Commission action.** This will allow affected agencies and stakeholders additional time to provide comments and to allow LAFCO staff additional time to consider and address agency and stakeholder concerns.

Provided below is a discussion of the Draft Policies and some of the concerns and questions that have been raised regarding these policies.

GENERAL POLICIES

Description of Proposed Draft Policy

Existing LAFCO policies require mitigation for the loss or conversion of agricultural lands. The proposed policies establish minimum criteria and standards for providing agricultural mitigation for LAFCO proposals in order to make LAFCO's expectations and requirements clear to affected property owners, cities, other local agencies and the public. The purpose of the proposed policies is

to ensure that impacts to agricultural lands are mitigated and that mitigation results in the permanent preservation of agricultural lands.

LAFCO will use these proposed policies to evaluate if the agricultural mitigation proposed by the applicant is adequate. Therefore, in addition to meeting the city's or other local agency's mitigation requirements, a LAFCO proposal must be consistent with LAFCO's mitigation policies. Policies #3 and #4 encourage cities to adopt citywide mitigation policies consistent with LAFCO's mitigation policies and encourage property owners and cities/agricultural conservation agencies to work together on developing mitigation measures and programs that that would be consistent with LAFCO Policies.

All LAFCO proposals that involve or impact prime agricultural lands must provide adequate and appropriate mitigation. Although this policy would apply to any type of LAFCO proposal involving agricultural lands, typically, such LAFCO proposals will involve USA expansions.

Questions and Concerns about Proposed Draft Policy

1. *Why is it important to preserve agricultural lands in Santa Clara County?*

See Attachment E.

2. *How do the Draft Policies relate to LAFCO's existing policies on agricultural preservation?*

LAFCO will use the agricultural mitigation policies in conjunction with other existing LAFCO policies when reviewing boundary change proposals. One of LAFCO's primary mandates is to preserve and protect agricultural lands and therefore LAFCO's existing policies discourage the conversion of agricultural lands. According to existing LAFCO policies and state law, LAFCO must consider if the proposed conversion of agricultural lands is premature, if there are other non-agricultural lands suitable for development, if infill opportunities have been exhausted, if all significant vacant land within the existing boundaries has been developed, if the proposal adversely affects other agricultural lands etc., along with several other factors relating to service provision and logical and orderly growth and development. Once these considerations have been evaluated and if there still is a need to expand into agricultural lands, then LAFCO will require that mitigation for the conversion of the agricultural lands be provided as per the standards set forth in Agricultural Mitigation Policy. By requiring mitigation for conversion of agricultural lands, LAFCO is helping ensure that other agricultural lands remain in agricultural use.

2. *What is LAFCO's authority under the Cortese Knox Hertzberg Local Government Reorganization Act of 2001 (CKH Act) to require agricultural mitigation? – AND - How would LAFCO's agricultural mitigation requirements be considered in the CEQA process?*

One of the essential purposes of LAFCO, as mandated by the CKH Act, is the preservation of agricultural lands. LAFCO must balance the need for growth and development with its mandate for preserving agricultural lands. The CKH Act mandates that each LAFCO develop written policies and procedures that address the protection of agricultural lands. The requirement of implementing protections for other agricultural lands, as mitigation for allowing development of agricultural lands is one way of fulfilling its mandate while striking a balance between the need for growth and agricultural preservation. The proposed Agricultural Mitigation Policies will enable LAFCO to better consider proposals involving conversion of agricultural land. Existing LAFCO policies require mitigation when a LAFCO proposal involves conversion of agricultural land. The proposed policies provide more guidance and set minimum standards and criteria for the required mitigation.

Agricultural mitigation is a tool that local governments (cities, counties and LAFCOs) commonly use to protect farmland and to maintain the economic viability of agriculture. LAFCO is required to protect agricultural lands. Agricultural mitigation is a tool that LAFCO will use where appropriate, as a way to meet its mandate of preserving agricultural lands and preventing their premature conversion.

LAFCO's Draft Agricultural Mitigation Policies will assist LAFCO in preparing, reviewing and commenting on environmental documents. The Policies will help to ensure that LAFCO's concerns and expectations are considered upfront in the environmental review process and in environmental documents prepared by cities and consultants.

3. *Can LAFCO condition approval of proposals on provision of agricultural mitigation? Would LAFCO be regulating land use by applying such conditions?*

The CKH Act grants LAFCO the power "to review and approve or disapprove with or without amendment, wholly, partially or conditionally," a request for a change in boundary. Govt. Code §56375(a). Furthermore, the CKH Act allows LAFCO to conditionally approve a proposal "upon the acquisition, improvement, disposition, sale, transfer or division of any property real or personal". Govt. Code §56886(h). The agricultural mitigation conditions relate to transfer of real property and therefore fall within the authority granted to LAFCO.

The CKH Act however, prohibits LAFCO from applying conditions that “would directly regulate land use, density or intensity, property development or subdivision requirements.” Govt. Code §56375 (a). Direct regulation of land use generally occurs through the adoption of general plans or specific plans, zoning designations and subdivision requirements. The Draft Policies do not require LAFCO to impose a particular land use designation on any property; the policies simply require the permanent protection of lands that are already planned or designated for agriculture. The policies provide for three alternatives through which such mitigation may be fulfilled including purchase and transfer of fee title or purchase and transfer of conservation easement or payment of in-lieu fees. Like most LAFCO decisions or actions, the agricultural mitigation conditions may influence or impact land use but they do not directly regulate land use.

4. *Has LAFCO completed a nexus study under the Mitigation Fee Act?*

LAFCO’s Draft Agricultural Mitigation Policies do not establish a mitigation fee and therefore LAFCO is not subject to the Mitigation Fee Act. The payment of an in-lieu fee to an agricultural entity is one of three identified options for mitigating for the conversion of prime agricultural lands. Under the Draft Policies, property owners and cities are free to meet this condition through one or more of the three options. Cities and agricultural conservation agencies are also free to establish their own agricultural mitigation fees consistent with LAFCO’s Policies.

DEFINITION OF PRIME AGRICULTURAL LANDS

Description of Proposed Draft Policy

Policy #5 defines prime agricultural lands based upon local conditions. The proposed definition consists of the CKH Act’s definition of prime agricultural land as well as all categories of farmland designated on the State Department of Conservation’s (DoC) “Important Farmland Map” dated 2004 (see Attachment C) including “Prime”, lands of “Statewide Importance”, “Unique Farmland” and lands of “Local Importance”. The CKH Act’s definition includes those farmlands that are currently not irrigated, as long as irrigation is possible. The farmlands depicted on the DoC’s map for the most part, correspond with the CKH Act’s definition and include farmlands that are considered to be important at the local level. The DoC’s map provides a quick visual guide to the location of agricultural lands in the county. Given the rapid rate of conversion of farmland and the small quantity of remaining farmland in Santa Clara County, the Draft Policies do not use size/acreage as a factor to determine the importance of farmland for mitigation purposes.

Questions and Concerns about Proposed Draft Policy

1. *Why is LAFCO not using the Land Evaluation Site Assessment Model (LESA) to determine whether an application requires agricultural mitigation?*

The California LESA Model is a point-based approach for rating the relative importance of agricultural land resources based upon specific measurable features and was developed in order to provide agencies with an optional methodology to ensure that significant effects on the environment of agricultural land conversions are quantitatively considered in the environmental review process. Neither LAFCO, nor cities are required to use the California LESA Model.

Although agricultural resources, and the agricultural economy can vary from county to county and vary over time, the California LESA Model uses a stationary, one-size fits all, approach to rating the relative importance of agricultural land resources. The Model favors larger sites that are located away from urban development.

According to the 2002 Census of Agriculture, 40% of all farms in Santa Clara County are 1 to 9 acres in size and the median size for a farm in Santa Clara County is 11 acres. In many urban counties, there is also a trend towards small size farms that focus on specialty crops that are located at the urban edge. These farms often market directly to clients (e.g. restaurants, people participating in community supported agriculture programs etc.) located in nearby urban centers.

Staff believes that the current California LESA Model is not an appropriate tool for rating the relative importance of agricultural land resources in Santa Clara County. The California LESA Model may have some usefulness in Santa Clara County if it were refined and calibrated to address local agricultural conditions and trends. A national survey on the use of the LESA Model found that over 200 jurisdictions (cities, states, and LAFCOs) have developed local LESA methodologies for this very reason.

2. *Why is LAFCO's definition of prime farmland so broad and why is it not based on a minimum acreage?*

The Draft Policy includes a definition for prime agricultural land. The definition consists of the Cortese Knox Hertzberg Act's (CKH Act's) definition of prime agricultural land and as well as lands that are designated "Prime" or lands of "Statewide Importance" or "Unique Farmland" or lands of "Local Importance" as shown by the State Department of Conservation on the "Important Farmland Map" dated 2004. This definition consists of the various types of farmland

present in Santa Clara County that are considered to be important at the state level and important to the local economy.

According to the California Department of Conservation, between 2002 and 2004, nearly 1000 acres of important farmland in Santa Clara County was converted to urban development. Once farmland is converted to urban development it is unlikely it will ever return to farming. Therefore, the Draft Policy considers the loss of any amount of farmland to be important and requires that loss to be mitigated.

3. *Does LAFCO require applications involving grazing lands to mitigate for the loss of grazing lands?*

As mentioned above, the Draft Policies include a definition for prime agricultural lands that is partly derived from the CKH Act's definition of prime agricultural land. The CKH Act definition of prime agricultural land includes "land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per an acre as defined by the United State Department of Agriculture in the "National Range and Pasture Handbook." Under this definition, an acre of grazing land would need to produce sufficient forage to sustain one mature cow of approximately 1,000 pounds and a calf as old as six months, or their equivalent, for an entire year.

We anticipate that the applicability of Policy #5d will be extremely limited in Santa Clara County. This definition typically applies to mild winter areas in the United States with sufficient rainfall throughout the year to create highly-productive grazing lands. However, these climatic conditions do not exist in Santa Clara County. In this region, most livestock grazing occurs on hillsides and other non-irrigated rangelands surrounding the valley floor. Typical annual carrying capacity of local rangeland can vary from 12 acres per animal unit on productive grasslands up to 30 acres or more per animal unit in areas with dense trees and brush.

In order to meet the Policy #5d definition in Santa Clara County, such grazing lands would typically have to be irrigated pasture land not already designated as prime agricultural land under Policy #5a, #5b, #5c, #5e, or #5f. Data maintained by the Santa Clara County Department of Agriculture indicates this particular definition may have little applicability in Santa Clara County.

MITIGATION REQUIREMENTS

Description of Proposed Draft Policy

Policy #6 specifies how much and what type of mitigation must be provided when a proposal involves conversion of agriculture land. The proposed policy establishes a minimum standard for mitigation at a 1:1 ratio (i.e., 1 acre of land

must be preserved for every acre that is converted to non-agriculture use). Although this ratio does not fully mitigate for the conversion of agricultural land, since in effect it only preserves 50% of the land, a 1:1 ratio is considered reasonable and is most commonly used. The policy provides three options for how the mitigation may be provided:

- Purchase and transfer agricultural land
- Purchase and transfer of agricultural conservation easements
- Payment of in-lieu fees

A city may choose to adopt a higher mitigation ratio to encourage or discourage the use of one or more of the mitigation options, as long as it meets the 1:1 requirement.

Policies # 7 and #8 specify where the mitigation must be provided. In order to obtain the most effective mitigation, the policy requires the mitigation to be provided within Santa Clara County and located in an area planned for agriculture that are likely to be threatened by future development. It is also recommended that the mitigation lands should help define a permanent / stable urban-agricultural edge. The intent of this policy is to encourage mitigation to occur on lands that are likely to be developed in the near future rather than preserving less threatened agricultural lands located far from the city boundary. Further refinement of this policy is necessary.

Policy #9 deals with LAFCO proposals that impact adjacent agricultural lands and that would induce the premature conversion of adjacent agricultural lands. The policy requires the cities to adopt certain measures, such as requiring establishment of buffers at the time of its land development process, adopting right to farm ordinances and developing programs to enhance awareness of agriculture and to promote the viability of agriculture.

Questions and Concerns about Proposed Draft Policy

1. *Why do the Draft Policies require that agricultural mitigation occur at a 1:1 ratio and not at a higher or lower mitigation ratio?*

It has been suggested that LAFCO's policies should allow limited flexibility in the ratio to promote quality mitigation. It has also been suggested that higher ratios are not financially feasible in Santa Clara County given the high land costs.

The 1:1 mitigation ratio is a minimum mitigation ratio and is a common agricultural mitigation ratio used throughout California and in many other states. Even with a 1:1 agricultural mitigation ratio, the impact is only partially reduced (i.e. net effect is a 50% loss of farmland).

The City of Davis is the only jurisdiction in California (that we are aware of) which requires a higher agricultural mitigation ratio (2:1 is required) than 1:1. According to Mitch Sears, City of Davis Open Space Planner, the City of Davis

recently increased its agricultural mitigation ratio from 1:1 to 2:1 in order to get closer to true mitigation because any conversion of farmland is by default a loss of farmland. It has also been suggested that in the real world, mitigations are not perfect, programs and easements are often violated, or simply become infeasible and that an agricultural mitigation ratio should be a little higher (1.2:1) than 1:1 to account for the possibility of failure. Wetland restoration mitigations typically use 2:1 or 3:1 to address this very concern.

The Draft Policies set a minimum standard (1:1) for agricultural mitigation ratios and cities are free to establish higher mitigation ratios in their own citywide agricultural mitigation policies.

2. *Why don't the Draft Policies include language favoring the use of fee title acquisitions to agriculture conservation easements as a form of agricultural mitigation?*

It is our understanding that there are pros and cons to each of these options. According to some, fee title acquisitions (with subsequent leases to farmers) may be somewhat more expensive but will provide greater public benefit, such as providing greater assurance that the protected lands will actually be used for productive farming, enabling agricultural practices that are more friendly to wildlife, allowing future recreational trail development and creating the opportunity to combine adjacent small parcels to create larger parcels that may better meet the needs of farmers.

Others have indicated that the ideal form of agricultural mitigation would be the acquisition and transfer of agricultural conservation easements because the farmer would continue to own the land and therefore the farmer would be more inclined to employ measures that support the long-term agricultural use of the property. However, as a lessee, the farmer may have less of an incentive to employ measures that support the long-term agricultural use of the property, such as purchasing expensive but necessary farming equipment or farming certain crops that have a long maturity period.

The Draft Policies do not indicate a preference toward any form of mitigation. The Draft Policies also encourage cities with potential LAFCO applications involving or impacting agricultural lands to adopt agricultural mitigation policies that are consistent with the LAFCO Policies. Cities are free to indicate in their own agricultural mitigation policies a preference or requirement for certain forms of agricultural mitigation, such as fee title acquisition. Similarly, cities are free to provide incentives to encourage the use of specific forms of agricultural mitigation. For example, a city could set an agricultural mitigation ratio of 1:1 for fee title acquisitions and 2:1 for other types of mitigation or a city could set an agricultural mitigation ratio of 2:1 for in lieu fees and 1:1 for other mitigation methods.

3. *How can one establish that agricultural mitigation lands are “threatened / impacted in reasonably foreseeable future”. –AND- Why does or doesn’t LAFCO require agricultural mitigation to occur on lands that are close to the proposed development?*

Based on the comments received, there seems to be some confusion as to the criteria for location of appropriate mitigation lands. Some believe that true agricultural mitigation can only occur when it results in preservation of agricultural lands that are likely to be developed by a city in the near future. These agricultural lands would typically be located at or near the immediate urban edge. Others have expressed concern about being required to locate mitigation lands at the immediate urban edge because of the high costs of acquiring easements or fee title on those lands.

The intent of this policy is to encourage mitigation to occur on lands that are likely to be developed in the near future rather than preserving less threatened agricultural lands located far from the city boundary. LAFCO Staff will clarify this criterion in the Revised Draft Policies.

4. *What do the Draft Policies mean when they say an agricultural “buffer’s size, location and allowed uses must be sufficient to minimize conflicts between the adjacent urban and agricultural uses?” –AND- Why require agricultural buffers on adjacent agricultural lands if they are going to eventually be developed?*

Agricultural buffers are well defined areas located between non-agricultural development and agricultural land. An agricultural buffer is a tool used to help preserve the integrity of an agricultural area by minimizing conflicts between adjacent urban and agricultural uses. The purpose of an agricultural buffer is to shield agricultural operations from the effects of development and to protect development from the effects of agricultural operations. Agricultural buffers may be as small as a stand of trees, or as wide as 200 yards. In order to provide flexibility to cities and landowners, the Draft Policies do not define or set specific requirements for an agricultural buffer. Cities are free to set their own specific requirements for agricultural buffers or other methods to minimize potential conflicts between the proposed urban development and adjacent agricultural uses.

An ideal location for an agricultural buffer would be adjacent to well-defined agricultural preservation areas. However, buffers may be necessary to prevent the premature conversion of agricultural land in the short term and to allow for the continued farming on those lands. Therefore, it is appropriate to buffer existing agricultural areas from adjacent urban development in order to maintain an environment that supports the continued and potential use of these agricultural lands.

5. *What are some examples of city programs to improve community understanding of the necessity of agriculture in creating sustainable communities and promoting the continued viability of surrounding agricultural land?*

Some examples of city programs or projects include:

- Providing space for local farmers markets and/or a regional farmers market space to allow for direct sales of agricultural products
- Having a community garden program
- Providing information on local farms on city website or city newsletters or developing an expanded "County Crossroads" Map Program that identifies farms that conduct direct sales to public
- Being one of several sponsors for agricultural festivals
- Participating in a program to brand and market local agriculture (e.g. sticker program that identifies produce or products as "Santa Clara County Grown"
- Providing road or highway signs that say "These lands preserved by City of X" or "Welcome to the City X & City Y Greenbelt"

6. *What is LAFCO's authority to require cities to adopt land use policies and measures regarding agricultural protection?*

The measures (i.e. requiring agricultural buffers on land proposed for development, adopting a city Right to Farm Ordinance, and developing programs to improve community understanding and support of local agriculture) identified in this policy are common tools and techniques that local governments in California and across the nation have used to protect farmland and to ensure the economic viability of agriculture. The American Farmland Trust, a nationally recognized farmland preservation organization, has indicated that many of the most effective farmland protection programs across the nation include these common tools and techniques.

The intent of Policy #9 is to encourage the cities to employ measures to prevent the premature conversion of agricultural lands to other uses and to minimize potential conflicts between the proposed urban development and adjacent agricultural uses. Staff will clarify this policy in the Revised Draft.

AGRICULTURAL CONSERVATION ENTITY QUALIFICATIONS

Description of Proposed Draft Policy

Policy #10 establishes criteria on how an agency will qualify as an agricultural conservation entity. The intent of Policy #10 is to provide general standards that LAFCO, cities, and landowners can use to identify an agricultural conservation entity that is able (legally, technically, and financially) to hold and administer agricultural lands, agricultural conservation easements, and in-lieu fees for the

purposes of conserving and maintaining lands in agricultural production. These standards will also be useful if and when a new agricultural conservation entity is forming. Although LAFCO, cities, and landowners all play important roles in the agricultural mitigation process, the agricultural conservation entity is the entity that is largely responsible for conserving and maintaining the mitigation lands in agricultural production. Therefore, it is important that the agricultural conservation entity meet some minimum qualifications.

Questions and Concerns about Proposed Draft Policy

1. *Would LAFCO provide a list of approved agricultural conservation entities?*

No. Initially, LAFCO would require the agricultural conservation entity to submit documentation that establishes its compliance with the criteria in the LAFCO policy. LAFCO would have the discretion to determine if a particular agricultural conservation entity has met the criteria. In the future, based on its experience, LAFCO will be able to compile a list of such agencies.

Also, there has been a great deal of discussion nationally concerning the development of a national accreditation process for conservation entities. If and when this process is instituted, it may provide a useful resource for identifying qualified agricultural conservation entities.

PLAN FOR MITIGATION

Description of Proposed Draft Policy

Policies #11 and #12 discuss the application filing requirements that must be submitted along with a LAFCO proposal involving or impacting agriculture lands.

TIMING AND FULFILLMENT OF MITIGATION

Description of Proposed Draft Policy

Policies #13 through #16 specify when the mitigation must be provided and the LAFCO process for ensuring fulfillment of mitigation.

Ideally, mitigation must be provided at the time of or prior to LAFCO approval of a boundary change. One of the purposes of the Draft Policies is to provide landowners and developers with guidance on LAFCO's expectations and requirements concerning agricultural mitigation, which would enable them to provide the mitigation at the time of LAFCO approval. However, in order to provide flexibility, the policies allow LAFCO approval of a proposal to be conditioned on the mitigation requirements being completed within 2 years of LAFCO conditional approval. If the mitigation conditions are met, then the boundary change will become effective upon issuance of a Certificate of

Completion. If the conditions are not met, the approval will expire after two years.

It is the intent of this policy to strike a balance between ensuring timely, effective mitigation and ensuring that the requirements are practical and reasonable.

Policy #17 limits the number of pending USA applications (with unfulfilled mitigation requirements) to one at any given time from each city.

Questions and Concerns about Proposed Draft Policy

1. *Why is LAFCO's approval conditional on fulfilling the mitigation requirements and why is LAFCO not relying on agreements between property owners and cities to enforce LAFCO's mitigation requirements?*

The Draft Policies require that any LAFCO proposal converting agricultural lands must provide appropriate mitigation. If LAFCO is approving a proposal with mitigation measures, then it is LAFCO's legal responsibility to ensure that the mitigation has occurred. LAFCO must accept responsibility for oversight and enforcement of its policies. LAFCO cannot delegate its legal responsibility to another agency. In Santa Clara County, the first step to converting lands from agricultural to non-agricultural uses occurs when the land is included by LAFCO into a city's USA boundary. Mitigation for conversion of agricultural lands will be required at that time. Typically, LAFCO's authority ends with the approval of an USA amendment and LAFCO has no control over the annexation or land development process after that. Therefore it is important that LAFCO ensure that the mitigation is fulfilled prior to making any boundary changes effective.

It has been suggested that an agreement between the property owner and city specifying the mitigation to be provided would suffice as adequate assurance to LAFCO that the mitigation requirements will be fulfilled. Due to the questions regarding LAFCO's ability to enter into and enforce such an agreement and for the reasons stated above, this arrangement is not recommended at this time.

2. *Concerns that two years is too short a time frame in which to complete mitigation requirements, especially in the case of large-scale projects such as Coyote Valley development.*

This is one of the most frequently raised issues regarding the Draft Policy. Staff is looking into alternatives to address this concern. One of the suggested ways to address this issue is to extend LAFCO's conditional approval period and to establish a renewal process subject to LAFCO review. Again, although it is not appropriate to delay the mitigation for too long, a delay may be necessary in order to provide some flexibility while ensuring certainty of obtaining mitigation.

LAFCO must consider several different factors when reviewing and approving boundary changes. Boundary change proposals must be consistent with all of LAFCO policies. It is assumed that LAFCO proposals that seek to convert agricultural land to non agricultural uses are in anticipation of development within the next 5 years as required in LAFCO's USA policies and definitions. None of LAFCO's existing policies consider proposals beyond this time frame. If LAFCO wants to provide special consideration for such large-scale projects, LAFCO should first comprehensively review all of its existing policies with regard to this issue.

3. *What is the purpose of restricting the number of pending USA applications from a city until agricultural mitigation is provided for the city's previous USA approvals?*

This policy was meant to apply only to future LAFCO proposals that involve or impact agricultural lands. The purpose of this policy is to ensure that agricultural mitigation is completed for prior projects before approving additional projects that also require agricultural mitigation and to help LAFCO monitor compliance with LAFCO's mitigation requirements. In addition, since the concept of agricultural mitigation is fairly new in this county, this practice will enable LAFCO and the agencies to work out any issues before proceeding with other applications. LAFCO staff will clarify this criterion in the Revised Draft Policies.

4. *Why is LAFCO not establishing a maximum time limit between collection of in-lieu fees and purchase of agricultural lands?*

LAFCO, in its Draft Policies, can establish a maximum time limit between collection of in-lieu fees and purchase of agricultural mitigation lands. However, LAFCO has no ability to directly enforce such a requirement. Instead, LAFCO's Draft Policies require that a conservation entity establish written standards, policies and practices (such as the Land Trust Alliance's "Standards and Practices") for holding and administering agricultural lands, agricultural conservation easements and in lieu fees and be operating in compliance with those standards. These standards and practices should require the timely use of in-lieu fees. Conservation entities that fail to use in-lieu fees appropriately or in a timely manner will not be considered a qualified agricultural conservation entity.

NEXT STEPS

Release of Revised Draft of Agriculture Mitigation Policies

LAFCO staff will release a Second Draft of the Agricultural Mitigation Policies following the LAFCO meeting. These Policies will be mailed to all the recipients of the first draft as well as all the workshop attendees. The revised policies will also be available for download from the LAFCO web site at www.santaclara.lafco.ca.gov

Second Workshop on the Revised Draft Policies

LAFCO staff will hold a second workshop in late October to discuss and take comment on the Second Draft Agricultural Mitigation Policies. More information on the date, time and location of workshop will be provided with the revised policies.

LAFCO Public Hearing to Adopt Policies

LAFCO will consider and adopt the agricultural mitigation policies at a public hearing.

Date: Wednesday, December 13, 2006.

Time: 1:15 pm

Place: Chambers of the Board of Supervisors
70 West Hedding Street
San Jose, CA 95110

ATTACHMENTS

Attachment A	Draft Agricultural Mitigation Policies, August 14, 2006
Attachment B	August 28, 2006 Workshop Attendees
Attachment C	DoC's Important Farmland Map dated 2004
Attachment D	Comments Received as of October 2, 2006.
Attachment E:	Why is it Important to Preserve Agricultural Lands in Santa Clara County?

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LAFCO'S AGRICULTURAL MITIGATION POLICIES

General Policies

1. LAFCO's Agricultural Mitigation Policy establishes minimum criteria and standards for providing agricultural mitigation for LAFCO proposals involving agricultural lands.
2. LAFCO requires adequate and appropriate agricultural mitigation for all LAFCO applications that result in a loss of prime agricultural lands. Prime agricultural lands are defined in Policy #5.
3. LAFCO encourages cities with potential LAFCO applications involving or impacting agricultural lands to adopt agricultural mitigation policies that are consistent with this Policy.
4. When a LAFCO proposal impacts or involves a loss prime agricultural lands, LAFCO encourages property owners, cities and agricultural conservation agencies to work together as early in the process as possible to initiate and execute agricultural mitigation plans, in a manner that is consistent with this Policy.

Definition of Prime Agricultural Lands

5. Prime agricultural land as referred to in this policy means agricultural land that meets **any** of the following qualifications:
 - a. Lands that are designated "Prime" or lands of "Statewide Importance" or "Unique Farmland" or lands of "Local Importance" by the State Department of Conservation as shown on the "Important Farmland Map" dated 2004.
 - b. Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.
 - c. Land that qualifies for rating 80 through 100 Storie Index Rating.
 - d. Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Handbook on Range and Related Grazing Lands, July, 1967, developed pursuant to Public Law 46, December 1935.
 - e. Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the

production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.

- f. Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years.

Mitigation Requirements

- 6. Proposals involving the conversion of prime agricultural lands shall not be approved unless one of the following mitigations is provided at a not less than 1:1 replacement ratio along with the payment of necessary funds as determined by the city / agricultural conservation entity (whichever applies) to cover the costs of program administration, land management, monitoring, enforcement and promotion of agriculture on the mitigation lands:
 - a. The acquisition and transfer of ownership of agricultural land to an agricultural conservation entity for permanent protection of the agricultural land.
 - b. The acquisition and transfer of agricultural conservation easements to an agricultural conservation entity for permanent protection of the agricultural land.
 - c. The payment of in-lieu fees to an agricultural conservation entity that are sufficient to fully fund:
 - 1. The acquisition of agricultural lands or agricultural conservation easements for permanent protection, and
 - 2. The cost of administering, managing, monitoring and enforcing the agricultural lands or agricultural conservation easements, as well as the costs of promoting agriculture on the mitigation lands.
- 7. Agricultural lands or conservation easements acquired and transferred to an agricultural conservation entity must be located in Santa Clara County, must be lands deemed acceptable to the city and entity and must be consistent with this Policy.
- 8. The agricultural mitigation must result in the preservation of land that:
 - a. Is prime agricultural land and of equivalent quality and character as measured by the Average Storrie Index rating and the Land Capability Classification rating,
 - b. Is located in an area planned/envisioned for agriculture that would otherwise be threatened/impacted in the reasonably foreseeable future by development, and
 - c. Preferably will promote the definition or creation of a permanent urban/agricultural edge.

9. Because urban uses affect adjacent agricultural practices and introduce development pressures on adjacent agricultural lands, LAFCO requires cities with LAFCO proposals impacting agricultural lands to adopt measures to preserve adjoining agricultural lands, to prevent their premature conversion to other uses, and to minimize potential conflicts between the proposed urban development and adjacent agricultural uses. Such measures must include:
 - a. The city requiring the establishment of an agricultural buffer on the land proposed for development. The buffer's size, location and allowed uses must be sufficient to minimize conflicts between the adjacent urban and agricultural uses.
 - b. The city adopting measures such as a Right to Farm Ordinance, to ensure that the new urban residents shall recognize the rights of adjacent property owners conducting agricultural operations and practices in compliance with established standards.
 - c. The city developing programs to improve the community understanding of the necessity of agriculture in creating sustainable communities and promoting the continued viability of surrounding agricultural land.
 - d. Other appropriate measures to satisfy the intent of this policy may also be adopted.

Agricultural Conservation Entity Qualifications

10. The agricultural conservation entity must be a city or a public or non-profit agency. The agricultural conservation entity must:
 - a. Be committed to preserving local agriculture and must have a clear mission along with strategic goals or programs for promoting agriculture in the areas that would be preserved through mitigation,
 - b. Have the legal and technical ability to hold and administer agricultural lands and agricultural conservation easements and in-lieu fees for the purposes of conserving and maintaining lands in agricultural production and preferably have an established record for doing so, and
 - c. Have adopted written standards, policies and practices (such as the Land Trust Alliance's "Standards and Practices") for holding and administering agricultural lands, agricultural conservation easements and in-lieu fees and be operating in compliance with those standards.

Plan For Mitigation

11. A Plan for Agricultural Mitigation that is consistent with this Policy must be submitted at the time that a proposal impacting agricultural lands is filed with LAFCO.

12. The Plan for Mitigation shall include all of the following:
 - a. An agreement between the property owner and the city or between the property owner, city and agricultural conservation entity (if such an entity is involved) that commits the property owner to provide the appropriate mitigation for the loss of prime agricultural lands and establishes the specifics of the mitigation in a manner consistent with this Policy. The agreement would be contingent on LAFCO approval. Upon LAFCO's conditional approval of proposal, the agreement must be recorded with the County Records' Office against the property to be developed.
 - b. Information on specific measures adopted by the city to demonstrate city's compliance with Policy #9.
 - c. All other supporting documents and information to demonstrate compliance with this Policy. A checklist will be developed.

Timing and Fulfillment of Mitigation

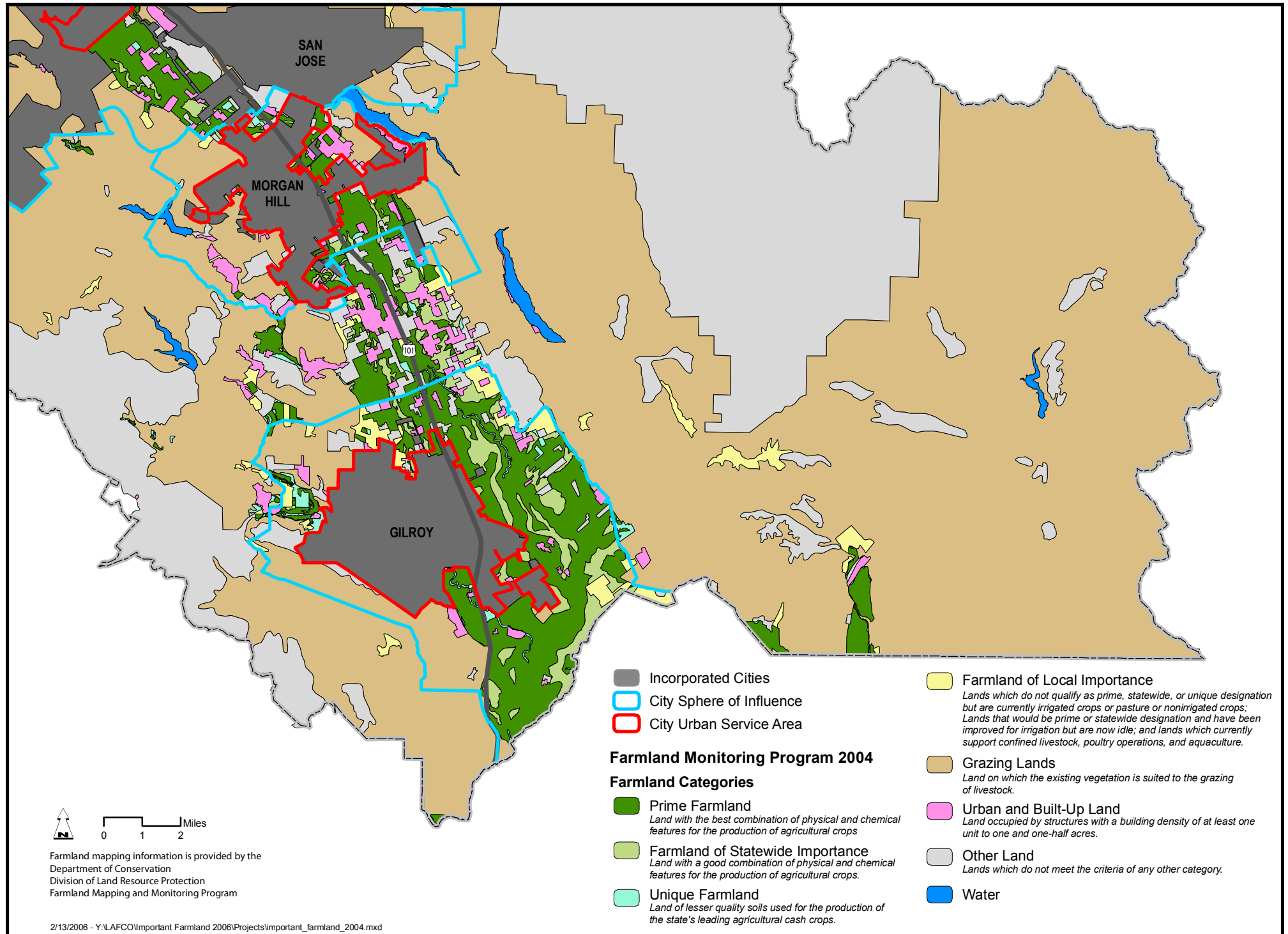
13. LAFCO will require as a condition of approval that the agricultural lands or conservation easements be acquired and transferred or the in-lieu fees be paid within 2 years of the LAFCO's conditional approval. This will provide the property owner with sufficient flexibility to meet the mitigation requirements while ensuring that agricultural mitigation is provided in a timely manner.
14. Upon fulfillment of the conditions of approval, LAFCO will issue a Certificate of Completion. The effective date of the boundary change will be the date of issuance of the Certificate of Completion.
15. If the conditions of approval are not met within 2 years, the conditional approval will expire. Any further consideration by LAFCO will require a new application.
16. The city will not be able to approve the related city-conducted annexation until the Certificate of Completion for an USA approval is issued.
17. LAFCO will not accept other USA amendment proposals from the city until the agricultural mitigation is provided for the city's previous USA approvals.

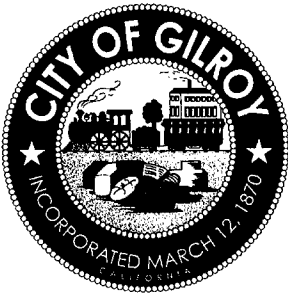
LAFCO Workshop on Draft Agricultural Mitigation Policies
August 28, 2006

LIST OF ATTENDEES

- | | |
|------------------------|---|
| 1. Matt Baldzikowski | Midpeninsula Regional Open Space District |
| 2. Michele Beasley | Greenbelt Alliance |
| 3. David Bischoff | City of Morgan Hill |
| 4. Linda Callon | City of Gilroy |
| 5. Eric Carruthers | Santa Clara County resident |
| 6. Pat Congdon | Santa Clara County Open Space Authority |
| 7. Kimberly Teter Cope | RJA & Associates |
| 8. Craig Edgerton | Silicon Valley Land Conservancy |
| 9. Rachael Gibson | Office of Supervisor Gage (District 1) |
| 10. Jared Hart | City of San Jose |
| 11. Melissa Hippard | Sierra Club |
| 12. Virginia Holtz | Santa Clara County resident |
| 13. Stefanie Hom | City of San Jose |
| 14. Janet Kern | City of Morgan Hill |
| 15. Josh Lazarus | Santa Clara County Open Space Authority |
| 16. Michael McDermott | Luchessa Road, LLC |
| 17. Susan Mineta | Shapell Industries |
| 18. Kevin O'Day | Santa Clara County Agriculture & Environmental Mgt. |
| 19. Bob Power | Santa Clara Valley Audobon Society |
| 20. Connie Rogers | Save Open Space Gilroy |
| 21. Brian Schmidt | Committee for Green Foothills |
| 22. Bill Shoe | Santa Clara County Planning Office |
| 23. Mary Solari | |
| 24. Carolyn Suner | James Group |
| 25. Carolyn Tognetti | Save Open Space Gilroy |
| 26. Greg Wassenhove | Santa Clara County Agriculture & Environmental Mgt. |
| 27. Don Weden | Santa Clara County resident |
| 28. Lee Wieder | Access Land Development |
| 29. Kerry Williams | Coyote Housing Group, LLC |
| 30. Kristina Wyatt | Armanasco Public Relations Inc. |

Santa Clara County Important Farmland 2004





City of Gilroy

COMMUNITY DEVELOPMENT DEPARTMENT

7351 Rosanna Street, Gilroy, CA 95020

Planning Division	(408) 846-0440	FAX: (408) 846-0429
Engineering Division	(408) 846-0450	FAX: (408) 846-0429
Building, Life & Environmental Safety Division	(408) 846-0430	FAX: (408) 846-0429
Housing & Community Development	(408) 846-0290	FAX: (408) 846-0429

August 21, 2006

Neelima Pelacherla, Executive Officer
Local Agency Formation Commission
70 West Heading Street
11th Floor, East Wing
San Jose, CA 95110

Re: Draft Agricultural Mitigation Policy, dated 8/14/06

Dear Neelima;

We just received your staff's draft Agricultural Mitigation Policy late last week, and are now attempting to adjust our calendars in order to make your first workshop scheduled for early next week. First of all, this rapid fire schedule has not allowed us adequate opportunity to review the proposed policy, especially in light of our concerned community stake holders. However, we have two initial comments that I would like to express:

1] Policy #13, states that "... in-lieu fees be paid within 2 years of the LAFCO's conditional approval." This policy disregards the inherent complexity of agricultural mitigation and the need to keep the goal in mind, not a strict timetable. We would suggest that a more realistic schedule might be in the order of three years, with an opportunity to extend subject to LAFCO review.

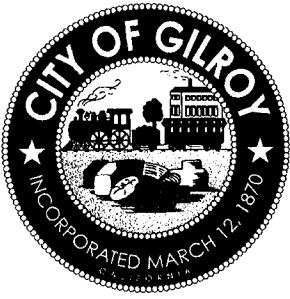
2] Policy #17. This policy does not appear to serve a purpose, while potentially holding up [and stopping] all future USA requests for the sake of one or more prior USA approvals that may be languishing due to unforeseen and/or unavoidable events. We suggest that this policy be removed.

Please consider these our initial comments, with others to follow.

Respectfully;

William Faus
Planning Division manager
bfaus@ci.gilroy.ca.us

cc Cydney Casper



City of Gilroy

COMMUNITY DEVELOPMENT DEPARTMENT

7351 Rosanna Street, Gilroy, CA 95020

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August 29, 2006

c/o Neelima Pelacherla, Executive Officer
Please forward to LAFCO members
Local Agency Formation Commission
70 West Heading Street
11th Floor, East Wing
San Jose, CA 95110

Re: Draft Agricultural Mitigation Policy, received 8/16/06

Dear LAFCO members;

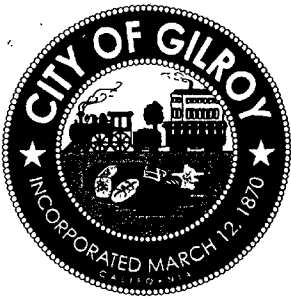
Less than two weeks ago, we received a draft copy of the Agricultural Mitigation Policy proposed by LAFCO staff. We provided preliminary comments for your workshop yesterday, and are expecting to have additional comments for our September 20 conference call with LAFCO staff. In addition, due to the wide-ranging nature and potential significance of this important policy, we are in the process of notifying our local agricultural stake holders. Hopefully, we'll have their comments by late September.

Known by all, this proposed policy represents a significant step in agricultural preservation in Santa Clara County and especially the South County region. A hurried schedule here is not in the policy's best interest, so we politely ask that this matter be tempered by sufficient time and a studied approach. **Therefore, we recommend a 30 day review period following the second draft, which should incorporate comments from stake holders within the larger Santa Clara County agricultural community.**

Respectfully;

William Faus
Planning Division Manager
bfaus@ci.gilroy.ca.us

cc Linda Callon, City Attorney



City of Gilroy

COMMUNITY DEVELOPMENT DEPARTMENT

7351 Rosanna Street, Gilroy, CA 95020

Planning Division	(408) 846-0440	FAX: (408) 846-0429
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September 20, 2006

Neelima Palacherla, Executive Director
Local Agency Formation Commission
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

Re: Proposed Draft LAFCO Agricultural Mitigation Policy

Dear Neelima,

Thank you for the opportunity to conference call with your staff this morning to discuss our concerns regarding the proposed draft LAFCO Agricultural Mitigation Policy. We were especially relieved to hear that the LAFCO hearing on the policy has been continued to the December 13 meeting. Because this is such a significant policy that affects the entire South County area, it is important to ensure that there is adequate time for all stakeholders to provide input and we appreciate you hearing and responding to our concerns.

Since the proposed policy significantly impacts Gilroy's Agricultural Mitigation Policy, which involved participation from a wide variety of stakeholders from the South County area, we felt it only appropriate that we also notify those stakeholders and seek their comments and input as well. In my letter to the stakeholders, I had requested that any comments be submitted on or before the October 11th LAFCO hearing date. Any comments I receive, I will forward over to you immediately.

At this time, we have the following initial comments regarding the proposed policy:

1) Policy 6.c.2: This section is redundant since these costs have already been outlined in 6 above.

2) Policy 8.b: The term "threatened/impacted in the reasonably foreseeable future" needs to be clarified. Gilroy has an area to the east that is designated for agricultural preservation. This area is outlined in our Agricultural Mitigation Policy. The properties in the agricultural preservation area that are adjacent to Gilroy's General Plan Boundary are smaller parcels with a lot of rural residences. As we discussed on the phone, we were informed by Nancy Richardson, prior Director of the Land Trust who participated actively in our Agricultural Mitigation Policy Task Force, these properties do not function well for long-term viable conservation easements because of their size and fragmentation. Because these properties are in our agricultural preservation area, they would not be developed. However, the larger commercial agricultural properties to the east (also in our preservation area) would function better for long-term viable conservation easements.

3) Policy 13: Two years is not sufficient time to respond to the complexities involved in agricultural mitigation and so we highly recommend that this be changed to three years, with the ability for extension subject to LAFCO review.

4) Policy 17: This is much more restrictive than LAFCO's current policy of one application per calendar year. This holds up and backlogs applications and projects for no reason since the requirement to provide agricultural mitigation is already conditioned upon a specific amount of time. If the mitigation is not made within that time, any LAFCO approval becomes null and void. So, this section serves no purpose in obtaining agricultural mitigation. However, as we discussed this morning, if the time frames are going to be changed and this policy remains, then clarification needs to be added that this does not apply to subsequent LAFCO applications that do not involve agricultural mitigation.

We appreciate the opportunity to comment and look forward to reviewing the upcoming revised policy. *Given the significance of this proposed policy, we recommend that a 30-day review period be provided for the second draft of this document in order to allow sufficient time for comments from the stakeholders that this policy affects.*

Sincerely,

A handwritten signature in cursive script that reads "Cydney Casper".

Cydney Casper
Planner II

cc: William Faus
Dunia Noel



COMMUNITY DEVELOPMENT DEPARTMENT
17555 PEAK AVENUE
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BUILDING: 408-779-7241
FAX: 408-779-7236
WWW.MORGAN-HILL.CA.GOV

September 7, 2006

Neelima Palacherla, Executive Officer
Santa Clara County LAFCO
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

Subject: Draft Agricultural Mitigation Policies


Dear Ms. Palacherla:

Thank you for the opportunity to review the draft Agricultural Mitigation Policies that your agency will consider adopting. I also appreciate the workshop you conducted to explain the intent of the draft policies. Two members of our staff attended the workshop and found it very informative.

As you know, although the draft policies will apply County-wide, the greatest effect will be on the South County area, including Morgan Hill. Because of these effects, our Planning Commission and City Council will want an opportunity to review and comment on the draft policies before they are adopted by your Commission. We received the draft policies on August 16th. We are currently analyzing the potential effects of the policies in order to present them to our Commission and Council. Given the date we received the draft policies and our Commission and Council hearing schedules, it will not be possible to provide City comments to you by the September 8 deadline. It also may not be possible to provide final City Council comments prior to your Commission hearing date. At the August 28th workshop, many questions and issues were raised about the policies and their implementation for which there were no definitive answers. We believe that resolution of these matters prior to Commission adoption is critical to implementation of workable and effective mitigation program.

At the workshop, you expressed a willingness to meet with us to answer our questions and address our concerns. We appreciate that offer and will likely request a meeting within the next few weeks. We however, request that you delay the Commission's hearing on the draft policies until we have had adequate time to formulate a City position on them. Alternatively, we would request the Commission receive comments at its October 11th meeting and defer action until all comments have been received and outstanding issues addressed.

Sincerely,


Kathy Molloy Previsich
Community Development Director

C: LAFCO Commissioners
City Manager
City Council





Memorandum

Date: September 22, 2006
To: Regional Land Use and Transportation Sub-Committee
From: Community Development Department
Subject: LAFCO Draft Agricultural Mitigation Policies

Purpose

This memo is intended to introduce to the Regional Land Use and Transportation Sub-committee draft policies that have been prepared by the Santa Clara County LAFCO. The memo includes a summary of the draft policies, staff observations and recommendations regarding the draft policies and several alternative responses the City may wish to consider. The memo is intended to illicit discussion of the issues associated with the draft policies. It is not intended to represent a City position on them. At the Sub-committee meeting, in addition to a discussion of the draft policies, Staff would like to discuss the appropriate process for development of a City position on them.

Background

One of LAFCO's statutory responsibilities is the preservation of agricultural lands. Historically, the Santa Clara County LAFCO has met this responsibility by encouraging compact urban development and directing development away from prime agricultural lands. Earlier this year, LAFCO directed its staff to develop policies that would strengthen its approach to this responsibility by requiring agricultural land to be preserved as a condition of LAFCO approvals. The draft policies have been developed and were distributed for public review in mid-August. A copy of the draft policies is attached to this memo. A public hearing to consider adoption of the policies has been announced for the October 11 LAFCO meeting, although LAFCO staff has indicated that the hearing may be continued to December 13th. Staff has requested LAFCO provide additional time (past October 11) for the City to develop a position regarding the proposed policies.

Draft Policies

Requirements

The draft policies are intended to require mitigation for the loss of prime agricultural land as a result of LAFCO approvals. Specifically, the policies would require that one acre of prime agricultural land be preserved for every acre of prime agricultural land LAFCO approves for potential development. Preservation would need to occur by acquisition of the mitigation land in fee title or agricultural conservation easement. The land to be preserved must be located in Santa Clara County and be

LAFCO Draft Agricultural Mitigation Policies
September 22, 2006
Page 2 of 6

"threatened/impacted in the reasonably foreseeable future by development". The draft policies would also require payment of a fee to the agency that would hold the property or easement for "managing, monitoring and enforcing" the lands or easements, and "promoting agriculture on the mitigation lands". In addition to this mitigation requirement, the City would be required to establish a buffer between the land that is subject to the LAFCO approval and adjacent agricultural land.

In addition to these property-specific requirements, the draft policies would require the City to establish a right-to-farm ordinance (which the City adopted in 1996) and develop community educational programs promoting the value of agriculture in the community.

Lands to Which Policies Would Apply

The draft policies would apply to all LAFCO approvals that involve prime agricultural land. The policies define prime agricultural land to include "Lands that are designated 'Prime' or lands of 'Statewide Importance' or 'Unique Farmland' or lands of 'Local Importance' by the State Department of Conservation as shown on the 'Important Farmland Map' dated 2004." This definition includes most of the lands on the valley floor that are outside the city limits and within the sphere of influence. Attached is a map prepared by LAFCO that identifies areas that meet the proposed definition of prime agricultural lands.

The definition of prime agricultural land also includes grazing land that is able to support livestock with an annual carrying capacity equivalent to at least one animal unit per acre. LAFCO staff and local ranchers believe this definition would not include any of the hillside land within the City's sphere of influence.

Applications Subject to Policies

The draft policies would apply only to LAFCO applications involving prime agricultural land. LAFCO staff has indicated it would apply to all Urban Service Area (USA) expansion requests and Out of Agency Service requests.

Application Processing

The draft policies would require, as a precondition to submittal of applications, the adoption of a right-to-farm ordinance and implementation of community educational programs promoting the value of agriculture in the community.

Each application involving prime agricultural land would need to be accompanied by a plan that identifies the mitigation property to be preserved, the process by which the preservation will occur and compliance with all other aspects of the LAFCO agricultural mitigation policies. The plan must also identify the buffer that will be established between the subject property and adjacent agricultural lands.

LAFCO approvals will become effective only upon implementation of all aspects of the mitigation plan. This includes the transfer of property for preservation and the payment of fees for management of the agricultural land to be preserved. If the mitigation plan is not fully implemented within two years, the LAFCO approval will expire. The draft policies would preclude LAFCO from hearing any new applications from an agency until the conditions all approved applications have been satisfied.

LAFCO Draft Agricultural Mitigation Policies
September 22, 2006
Page 3 of 6

Staff Observations

Approach to Agricultural Land Preservation

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 provides legislative direction for the functions of LAFCOs. Those functions include guiding development away from existing agricultural lands and encouraging development of existing vacant lands within cities before approving proposals leading to development of additional agricultural lands. Historically, the Santa

Clara County LAFCO has fulfilled that responsibility in part through its review authority over city requests for expansion of urban service areas. LAFCO decisions regarding expansion of the USA have typically included evaluation of the amount of vacant land within that boundary and the agricultural quality of the land proposed to be added to it. When the inventory of vacant land within that boundary is sufficient to accommodate more than five years of growth, and/or when the quality of the agricultural land proposed to be added is higher than that of other land outside the USA, LAFCO has denied expansion requests. Also, LAFCO has relied on city environmental documents for mitigation of environmental impacts associated with USA expansions, including mitigation for the loss of prime agricultural land.

The existing LAFCO approach to agricultural land preservation is consistent with policy direction within the General Plan. Actions 3.4 and 3.5 of the Open Space and Conservation Element encourage new development to be located adjacent to existing developed areas and away from agricultural areas.

The current LAFCO approach is also consistent with that of many other LAFCOs throughout the State. Earlier this year, the Sacramento LAFCO surveyed 20 other county LAFCOs regarding their policies regarding agricultural land preservation. Almost all of those surveyed used a similar approach as is currently used by the Santa Clara County LAFCO.

The draft LAFCO policies would modify its approach to agricultural land preservation from one that discourages the premature conversion of agricultural land to urban use to one that requires agricultural land preservation. Of the LAFCOs surveyed by Sacramento, only the Yolo County LAFCO has adopted this type of requirement.

Lands to Which Policies Would Apply

As mentioned above, the draft policies define as prime agricultural land most of the vacant land on the valley floor, which is primarily located within South County. Staff believes that this definition is overly broad and includes lands that are not significant agricultural properties and that should not require mitigation as a condition of their addition to the USA. An example is the six parcels located at the northeast corner of Murphy Rd. and Barrett Ave. These parcels are all between one and two and a half acres in size. Substantial houses are located on five of the six parcels and the Buddhist Church is located on the sixth. As drafted, the policies would require mitigation for the loss of prime agricultural land if these parcels were proposed for inclusion within the USA. Staff recommends the policies be amended to recognize that not all lands identified as prime agricultural land are viable agricultural parcels and should not be required to provide mitigation.

LAFCO Draft Agricultural Mitigation Policies
September 22, 2006
Page 4 of 6

Applications Subject to Policies

According to LAFCO staff, the draft policies would apply to Out of Agency Service requests. Typically, the City receives such requests when properties have failing septic systems or wells. Staff does not believe mitigation for loss of agricultural land is relevant in such situations and should not be required.

Required Buffers

As drafted, the policies would require establishment of a buffer between land that is proposed for inclusion within the Urban Service Area and the adjacent agricultural land that is outside that boundary. Buffers to protect agricultural land are appropriate and provided for in the General Plan on the extreme fringe of the community. However, requiring a buffer adjacent to agricultural land that is not near the ultimate boundary of the City provides short-term agricultural benefit in exchange for long-term inefficient land use. The City required a buffer to be established between the Dividend property on Mission View Drive and the adjacent Mariani orchard. (The buffer has not yet been installed because that phase of the Dividend project has not been completed.) The Mariani orchard is within the Urban Limit Line and Urban Growth Boundary and is currently proposed for annexation. If the Mariani property is annexed and developed and the Dividend buffer installed, the buffer will not serve any purpose other than to separate two adjoining subdivisions.

Promotion of Agriculture

The policies propose to require the City develop programs "to improve the community understanding of the necessity of agriculture in creating sustainable communities and promoting the continued viability of surrounding agricultural land." Staff does not believe the City is the appropriate agency to develop and implement such programs. If such programs are to be developed, Staff believes the Farm Bureau or other agency directly involved in agriculture should undertake that activity.

Timing of Mitigation

The draft policies would require mitigation lands to be acquired and fees to be paid within two years of the conditional LAFCO approval. The funds required for this type of mitigation typically become available at the time development approvals are secured. Given the time lines of the Measure C, subdivision, design review and building permit processes, development approvals typically occur three to five years after LAFCO approval. Thus satisfaction of this requirement as proposed would be problematic.

The proposed two year time requirement may encourage property development within two years of its inclusion within the USA. This may result in conversion of agricultural land to urban use earlier than it otherwise would be converted. The time limitation also appears inconsistent with the LAFCO definition of the Urban Service Area as representing an area that would be annexed and developed within five years.

Staff understands the intent to ensure that mitigation lands are provided but believes there are tools available for that purpose that do not involve a specific time limitation for implementation.

LAFCO Draft Agricultural Mitigation Policies
 September 22, 2006
 Page 5 of 6

Prohibition Against Multiple Applications

The draft policies would preclude the City from submitting any new application for expansion of the USA until all the conditions, including acquisition of any required mitigation lands, are satisfied for previously approved applications. Staff sees no basis for this limitation and recommends it be eliminated.

Effective Date of Policies

As proposed, the draft policies would become effective on the date they are adopted. Earlier this year the City approved expansion of the USA to include the BlackRock property at the corner of Watsonville Rd. and Santa Teresa Blvd. The environmental assessment for that parcel found prime agricultural soils to exist on a portion of the site and required future evaluation to determine the level of significance associated with the loss of that resource. Adoption and implementation of the draft policies without any provision for 'grandfathering' of projects that have received some level of approval would result in a need for the City to modify its approval of the BlackRock application to require mitigation for that portion of the site that contains prime agricultural lands.

Implementation Costs

The cost to acquire mitigation land is unknown. Within the past four years, agricultural conservation easements have been purchased in the area south of Gilroy for approximately \$15,000 per acre. Adoption of the policies requiring mitigation will likely have the affect of increasing the value of such easements. The additional proposed fee for "managing, monitoring and enforcing the agricultural lands" and "promoting agriculture on the mitigation lands" is unknown and difficult to estimate. It is reasonable, however, to assume that the total mitigation cost will exceed \$20,000 per acre.

City Options

Among the options available to the City regarding the draft LAFCO policies are the following:

Support Existing Policies / Oppose Draft Policies

If adopted, the draft policies would be amongst the most stringent in the State (at least the most stringent of those surveyed by Sacramento). They would establish that the loss of any prime agricultural land is significant and prohibit the City from exercising its judgment in that regard. The current LAFCO policies adequately implement its responsibilities under the Cortese-Knox-Hertzberg Act and are consistent with current City policy.

Support Draft Polices, With Amendments

The draft policies could be supported with amendments that address the issues/observations raised earlier in this memo. The most significant of these deal with the type of land that requires mitigation. CEQA requires the City to mitigate for the significant loss of prime agricultural land. The State Department of Conservation encourages the use of the Land Evaluation and Site Assessment Model (LESA) to determine the significance of agricultural land. The model uses six factors in the evaluation of agricultural land including two that address soil quality and four that address factors regarding the site and its surroundings. Agricultural properties that achieve a certain score in this evaluation are

LAFCO Draft Agricultural Mitigation Policies
September 22, 2006
Page 6 of 6

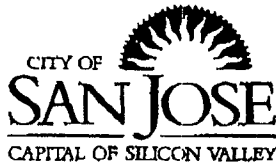
considered significant. (The City used this evaluation tool in the environmental assessment for the DiNapoli project.) The draft policies could be amended to provide for use of this model or other means to identify agricultural lands that are appropriate for mitigation.

Develop Regional Approach to Agricultural Land Mitigation

The draft policies represent a framework or foundation upon which a comprehensive agricultural lands mitigation program could be built. But they leave many issues unresolved. The policies require mitigation land to consist of agricultural properties that are "threatened/impacted" by development. There has been no evaluation of areas most suited for conservation as agricultural lands in perpetuity or the amount of land that could reasonably be expected to be preserved. The draft policies also require the mitigation land to be managed by agencies that are "committed to preserving local agriculture". There has been no evaluation of which agencies would best serve this purpose or if there is value in having all lands held by a single agency, or value in allowing farmers to own and manage the lands.

A variety of agencies in the County are currently developing a County-wide Habitat Conservation Plan. That Plan is identifying appropriate mitigation sites, comprehensive means of managing those sites and equitable ways of sharing the associated costs. This process could be used as a model for an agricultural lands mitigation program in the County. If this type of approach is desirable, the adoption of LAFCO policies should be deferred and a group involving all stakeholders formed to develop such a plan.

Attachments: Draft Agricultural Mitigation Policies
County Important Farmland Map 2004



Department of Planning, Building and Code Enforcement

JOSEPH HORWEDDEL, ACTING DIRECTOR

September 13, 2006

Ms. Neelima Palacherla, Executive Officer
Local Agency Formation Commission of Santa Clara County
70 West Hedding Street, 11th Floor, East Wing
San Jose, CA 95110

RE: Comments on Local Agency Formation Commission of Santa Clara County (LAFCO) Draft Agricultural Mitigation Policies.

Dear Ms. Palacherla:

Thank you for the opportunity to provide comments on LAFCO's Draft Agricultural Mitigation Policies. The City of San Jose shares a common interest with LAFCO in the preservation of viable agricultural uses in Santa Clara County, and accordingly, we support the overall goal underlying the draft Policies. The following comments and questions are primarily broad in scope because they represent the City's overarching and significant concerns with the proposed policies. The City looks forward to meeting with LAFCO staff to further discuss the Draft Agricultural Mitigation Policies.

- 1) The City recognizes that LAFCO is mandated to preserve open space and prime agricultural farm lands, as well as guide development away from existing agricultural lands under California Government Code §56301 and § 56377. However, as an entity created by statute, the City understands that LAFCO fulfills its mandates by performing and administering the tasks, duties and processes set forth for the Commission under the Cortese-Knox-Hertzberg Act of 2000, as amended. The City is not aware of any independent authority granted to LAFCO under the Cortese-Knox-Hertzberg Act or otherwise to adopt agricultural mitigation policies or requirements in which all municipalities within LAFCO's jurisdiction must adhere.
- 2) Has LAFCO completed its environmental analysis under CEQA as well as a Nexus Study under the Mitigation Fee Act to analyze potential environmental impacts of the proposed Draft Agricultural Mitigation Policies, as well as the proportionality of the exactions and fees being demanded under the Policies? The City requests an opportunity to review such related and supporting documents for the Policies.
- 3) Will LAFCO have the funding and resources necessary to process projects requiring LAFCO action involving prime agricultural land, as well as to monitor the mitigation actions required under the Policies?

- 4) Has LAFCO considered unintended consequences, such as discouraging orderly annexation, as a result of the Draft Agricultural Mitigation Policies? For example, if the process for agricultural mitigation is too long and/or restrictive, it may be more advantageous for the private sector to develop on nearby County lands, where the proposed Policies would not be triggered; thus, creating the unintended consequence of promoting urban sprawl or urban development on County lands in contravention of other City, County and LAFCO policies. This evaluation would normally be a part of the CEQA analysis of the proposed policies.
- 5) Under number 5, Definition of Prime Agricultural Lands, the City suggests using the California Land Evaluation and Site Assessment Model (LESA), which uses six different factors to rate the relative quality of land resources based upon specific measurable features. The six factors are land capability, soil quality/type, project size, water resource availability, surrounding agricultural land, and surrounding protected resource land. The advantage of the LESA model is that it ranks prime agricultural land according to the six factors mentioned. Under the current Draft Agricultural Mitigation Policies, if a parcel meets only one of the factors as described in number 5 (a –f), it is classified as prime agricultural farmland. However, this fails to recognize other aspects that contribute to the quality of agricultural land such as parcel size and adjacent use. Additionally, the City is not aware that LAFCO has authority to define prime agricultural farmlands in a manner that is different from existing state laws.
- 6) LAFCO's proposed Draft Agricultural Mitigation Policies require that agricultural mitigation is fulfilled within two years of an application being conditionally approved by LAFCO. The City agrees that mitigation measures should be carried out within a reasonable amount of time; however, for long term projects this proposed policy is probably infeasible. This is because for large and/or long range projects, funding is not likely to be available to carry out agricultural mitigation within two years of an action requiring LAFCO approval. Therefore, the City suggests that if this proposed policy is carried forward in some fashion that it be reworked to be flexible with both short and long range projects.
- 7) The proposed Draft Agricultural Mitigation Policies do not allow for more than one LAFCO application to be filed. Once that application's agricultural mitigation is complete, another LAFCO application involving prime agricultural farmlands can be submitted. For large and/or long range projects possibly spanning several decades, this proposed policy may limit the City's ability to move forward with its annexation program. In addition, the City is not aware of any nexus analysis that could support delaying, denying or conditioning one annexation action due to issues unrelated to that action and arising out of a separate annexation application.
- 8) In regards to implementation of the proposed Agricultural Mitigation Policies, what are the procedures, timing, and details of the certification process beyond the flow chart provided at the August 28, 2006 workshop?
- 9) Would an approved list of Agriculture Conservation Entity agencies or non-profits be established and periodically updated by LAFCO?

- 10) The City would like to request more time to work with LAFCO to address the issues giving rise to any potential Agricultural Mitigation Policies put forth by LAFCO. The participatory process involving municipalities that the draft policies would affect is approximately one month. The current draft document is of great importance and it therefore deserves a thorough participatory process with those entities which must adhere to the policies.

Thank you for the opportunity to participate in this important process. Again, the City of San Jose strongly shares the concerns and objectives underlying LAFCO's Draft Agricultural Mitigation Policies to conserve prime agricultural farmland in Santa Clara County. An example of a recent Agricultural Mitigation Policy created by the City for the Evergreen East Hills Vision Strategy is attached to this letter. We hope our comments are helpful and will be considered when considering any final work product related to the Agricultural Mitigation Policies. As mentioned, we also look forward to meeting and discussing the proposed document in further detail. If you have any questions or comments regarding this letter please contact Laurel Prevetti (535-7901) or me (535-7900).

Sincerely,



Joseph Horwedel, Acting Director

Department of Planning, Building & Code Enforcement



September 6, 2006

Local Agency Formation Commission of Santa Clara County
Attn: Neelima Palacherla, LAFCO Executive Officer
County Government Center, 11th Floor, East Wing
70 West Hedding Street
San Jose, CA 95110

RE: LAFCO's Draft Agricultural Mitigation Policies

Dear Ms. Palacherla,

Thank you for providing a copy of LAFCO's Draft Agricultural Mitigation Policies for our review.

All remaining agricultural land in the City of Sunnyvale is currently zoned for residential development. Therefore, LAFCO proposals are not likely to have an impact on agricultural lands in the City of Sunnyvale.

If you have any questions or need further information, please feel free contact Mariya Hodge at (408) 730-7659 or MHodge@ci.sunnyvale.ca.us.

Sincerely,

Andrew Miner
Principal Planner

ADDRESS ALL MAIL TO: P.O. BOX 3707 SUNNYVALE, CALIFORNIA 94088-3707
TDD (408) 730-7501

Printed on Recycled Paper



May 25, 2006

Ms. Neelima Palacherla
Santa Clara County LAFCo
70 West Hedding St, 11th Floor, East Wing
San Jose, CA 95110

Re: LAFCo Agricultural Mitigation Policy

Dear Ms. Palacherla;

The Committee for Green Foothills submits the following comments regarding the proposed LAFCo Agricultural Mitigation Policy:

- **CEQA and good policy require the highest feasible level of agriculture preservation be achieved when annexation results in the loss of farmland.** CEQA requires the imposition of feasible mitigation measures that substantially lessen adverse impacts. Public Resources Code sections 21081(a)(1); 21081(a)(3). While preserving farmland does partially mitigate for the loss, a 1:1 ratio clearly does not eliminate the significant impact, as the net effect is a 50% loss of farmland. Accordingly, LAFCo staff should review policies at other LAFCOs and at the least, it should adopt the highest ratio of preserved-to-lost farmland currently in use.
- **Even if LAFCo determines that preserving an amount of land equal to the amount of lost farmland is adequate, a 1:1 ratio is inadequate because it assumes the program will work perfectly.** In the real world, mitigations are not perfect, programs and easements are often not followed or violated, or simply become infeasible. Wetland restoration mitigations frequently use 2:1 or 3:1 ratios or higher to account for the possibility of failure. A 20% addition to the preservation ratio (a 1.2:1 ratio) would provide some assurance that an equal amount of land will be preserved, and should form the lowest preservation ratio considered by LAFCo.
- **LAFCo must retain as a feature of the ag mitigation policy that it has the legal ability to enforce the ag mitigation requirements.** Staff's proposal for conditional approval of an annexation, with mitigation preceding issuance of a Certificate of Completion, satisfies this requirement. Any alternative proposal that modifies this in a way that removes LAFCo enforcement ability will turn this whole process into a sham exercise. It is incumbent upon anyone proposing an alternative to show how staff can feasibly enforce mitigation requirements.
- **Extending the conditional approval period to longer than two years may be an appropriate method to merge LAFCo enforcement ability with timelines that landowners may need to arrange mitigation.** An expedited renewal process may also help resolve problems where landowners may not be able to meet deadlines. Tracking these projects over time will require additional LAFCo resources however, and fees should be imposed for purposes of cost recovery.
- **Complaints that the staff proposal conflicts with long-term planning for city expansion are invalid.** In the first place, annexations that provide space for land that the cities will not use for decades are already disallowed. Cities remain free to develop expansion plans that project decades in the future – however, any annexation proposal might have to be a subsidiary component of the city's plan, and could only be considered when it is timely. This is the current policy, and the ag mitigation proposal is not a change in kind. If Coyote Valley landowners, as a hypothetical example, complained they could not arrange to buy easements when development of their property would not occur for decades, then they

would simply be admitting that annexation of their properties should not be allowed at all. As a practical matter, annexation could occur with staff's ag policy, with component parts being proposed for conditional approval, and a certificate received upon completion of the mitigation for each part. Extending the conditional approval period and expediting renewal of the period should address any remaining concerns.

- **Mitigation stacking should be at least discouraged; some kinds of mitigation stacking should never be allowed and it could be appropriate to prohibit stacking entirely.** Illusory mitigation, such as would occur by selling Transferable Development Rights on land already covered by conservation easements, should be prohibited. Similarly, stacking any subsequent mitigation easement on land already protected by an easement that achieves much the same goal is illusory and should be prohibited. Stacking easements for biological purposes and for agricultural preservation on the same property could result in conflicting mandates and should be discouraged or prohibited.
- **All mitigation funding, including maintenance and enforcement, is the responsibility of the annexation applicants (cities and landowners).** Applicants cannot pay less than their full share on the basis that they expect to apply for funding from agencies such as open space authorities. Agency funding to augment the ag mitigation project is a separate discretionary decision that does not reduce the obligations of those converting farmland to other uses.
- **While LAFCo does not have authority over County actions that convert farmland to other uses without changing jurisdictional boundaries, it should encourage the County to adopt ag mitigation programs similar to the LAFCo proposal.**
- **There should be some maximum time limit between collection of in-lieu fees by a conservation entity and land acquisition, at least in cases where in-lieu fees are large enough to finance acquisition in short order.**
- **Land acquisition must occur within Santa Clara County.**
- **Acquisition programs should prefer, including giving a price preference, purchasing easements on farms not already physically developed in ways that constrain future types of farming.** Permanent greenhouse structures (ones with paved floors) and mushroom-growing buildings are examples of problematic development if they are the dominant use on parcels being considered. Easements that prohibit hardscaping the property over a certain percentage level would be appropriate.
- **The buffer concept needs further development.** We suggest that buffers may also be farmed in some circumstances, but in ways that minimize potential conflicts with neighbors – maximizing production and profits would not be the first priority. Organic farming, growing hay, and limited working hours would be examples of buffer management that could be appropriate. Because the buffer could not emphasize agriculture and might have to switch to other uses entirely, it should not count as part of the land preserved for agriculture.
- **Efforts to exclude lands from designation as “prime agriculture” should be opposed.** Staff proposed policies #5 and #8 should not be weakened by efforts to use loopholes such as capping wells and claiming the lack of water means the land is not prime, or removing “prime” designation by landowners simply leaving land fallow for several years.

Staff's LAFCo policies represent a strong step forward to protecting our County's heritage. The shame is that this was not done in previous decades. The sprawl now found in the north County could have been a “Silicon

Archipelago" of high tech development and housing surrounded by farmland. At least, we can avoid repeating mistaken sprawl in our remaining prime agricultural lands.

Please contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Schmidt", with a stylized flourish at the end.

Brian A. Schmidt
Legislative Advocate, Santa Clara County

Friends of the Coyote Valley Greenbelt (FROG)
PO Box 7665 • San Jose CA 95150-7665

September 15, 2006

Santa Clara County Local Agency Formation Commission (LAFCO)
70 W Hedding Street, 11th Floor
San Jose CA 95110

To: Santa Clara County LAFCO Commissioners:

From: Trixie Johnson, Chair, Friends of the Coyote Valley Greenbelt (FROG)

Re: **LAFCO'S Draft Agricultural Mitigation Policies**

PART 1: OVERVIEW

Thank You for Your Leadership

On behalf of the Friends of the Coyote Valley Greenbelt, I would like to commend you and your staff for addressing the very important issue of agricultural mitigation for losses of agricultural lands through conversion to other uses that may result from LAFCO decisions that allow cities to expand their urban service area (USA) boundaries.

An Extremely Important LAFCO Legacy Decision

FROG believes that adoption of agricultural mitigation policies will be one of the most important decisions that LAFCO has made in the more than thirty years since it adopted its landmark countywide urban development policies.

It represents perhaps the last opportunity to provide permanent protection to significant amounts of Santa Clara County's remaining agricultural lands – lands that would probably have been developed years ago with low density suburban and rural development had it not been for the foresight and leadership of your predecessors on LAFCO in the early 1970s.

Your decisions regarding agricultural mitigation provide you with a similar opportunity to leave a lasting legacy that will benefit Santa Clara County residents for generations to come, just as your predecessors did thirty years ago.

Multiple Benefits from Agricultural Mitigation Policies

LAFCO adoption of agricultural mitigation policies can provide a number of benefits to current and future generations of Santa Clara County residents, including:

- Strengthening LAFCO's existing urban development policies

- Preserving elements of our county's agricultural heritage
- Addressing global warming
- Providing statewide leadership

Each of these benefits is addressed in more detail below.

Strengthening LAFCO's Existing Urban Development Policies

For the past three decades, LAFCO's basic, countywide urban development policies have provided the foundation for orderly expansion of our cities' urban development – contrasting strongly with the seemingly random, leapfrogging development patterns that preceded their adoption.

By encouraging compact urban development that can more efficiently be provided with urban infrastructure and services, these policies have saved the cities and their taxpayers countless millions of dollars over the years.

Since LAFCO adopted its urban development policies, public agencies and nonprofit land conservation organizations have purchased and provided permanent protection to tens of thousands of acres of open space lands that contribute to the high quality of life we enjoy in Santa Clara County. These efforts, however, have left our farmlands unprotected.

LAFCO adoption of agricultural mitigation policies can be an important tool for strengthening these existing urban development policies and making them even more effective than they have been to date,

By providing the opportunity to establish permanently protected agricultural greenbelts near urban areas, LAFCO agricultural mitigation policies can reinforce its policies aimed at encouraging compact urban development – in addition to providing permanent farmland producing fresh, locally grown produce for these urban areas, and the additional benefit of valley floor open space.

Preserving Elements of Our County's Agriculture from Our Past into Our Future

Santa Clara County, before it became known as "Silicon Valley," was known as the "Valley of Hearts Delight," in reference to the beauty of its farmlands and orchards.

Ever since suburban development began replacing farms and orchards back in the 1960s, proposals have been advanced for preserving some of Santa Clara County's agricultural heritage by permanently protecting some of our remaining farmlands.

For the most part, these proposals have achieved few lasting results.

LAFCO adoption of agricultural mitigation policies can play a major role in finally achieving the permanent protection for some of Santa Clara County's agricultural productivity, that has remained elusive for so many years.

Addressing Global Warming

As our society begins to address in earnest the many challenges posed by global warming, we need to remember that land use and urban development patterns can play a significant role in reducing (or increasing) greenhouse gas emissions that contribute to global warming.

Sprawling, low density land use patterns not only increase the total amount of vehicle miles traveled (which increases greenhouse gas emissions), but make less viable other transportation alternatives (including using public transit, walking, and bicycling) that could contribute to the reduction of greenhouse gas emissions.

Consequently, in addition to their many other benefits (e.g. reducing public infrastructure costs, preserving open space and natural resources), compact urban development patterns can also play an important role in combating global warming.

By providing permanent agricultural greenbelts that can help implement urban development policies by guiding and constraining outward expansion of urban areas, agricultural mitigation policies can play a significant role in reducing greenhouse gas emissions.

Providing Statewide Leadership

When LAFCO adopted its current urban development policies in the early 1970s, it was the first county in California to do so. Taking such bold action during a period when rapid, sprawling development was the norm took vision, leadership, and courage.

Today, while prime agricultural lands in many parts of California are rapidly being paved over for low density suburban development, local jurisdictions are only now stepping forward to counter that trend and require mitigation for these farm land losses.

By adopting agricultural mitigation policies, Santa Clara County's LAFCO can once again demonstrate visionary leadership on an issue of profound long term importance, not only to Santa Clara County but to the rest of California as well.

An Excellent First Draft

FROG believes that the draft agricultural mitigation policies that LAFCO staff prepared provide an outstanding framework for the discussion and adoption of agricultural mitigation policies in Santa Clara County.

As with any first draft, there are some specific policies that will need refinement and modification to address unforeseen aspects of complex issues.

But, overall, FROG supports the basic draft policies that the LAFCO staff has put forth and encourages LAFCO to adopt agricultural mitigation policies that closely approximate those the staff has suggested.

Need for Prompt – But Thoughtful – Action

Adoption of agricultural mitigation policies should be a high priority for LAFCO, given its relevance to major development decisions, such as the potential development of Coyote Valley and the conversion of agricultural lands it would entail.

At the same time, FROG believes that LAFCO needs to take sufficient time during its adoption process to assure that the policies that are eventually adopted are fair, effective, workable, and enforceable.

PART 2: FROG's COMMENTS AND SUGGESTIONS

Having expressed its general support for the draft policies prepared by LAFCO staff, FROG would like to offer the following comments and suggestions for LAFCO consideration.

LAFCO Should Not Take Final Action in October

At the recent LAFCO staff workshop, some of the cities expressed concern that they did not have adequate time to have their city councils review the draft policies prior to LAFCO's October meeting, due to their reduced summer meeting schedules.

In addition, others raised issues that it may not be possible to resolve constructively prior to the October meeting.

While FROG supports the goal of having LAFCO adopt agricultural mitigation policies as soon as is reasonably possible, it believes that LAFCO should proceed with its October meeting as a status report to the Commission, but let it be known in advance to all major stakeholders that LAFCO will not be taking final action at that meeting.

Ultimately, it is important that the policies that LAFCO adopts be widely perceived as being fair, effective, workable, and enforceable. And if it takes a month or two more to resolve some of the remaining issues, FROG would support extending the adoption schedule.

Adding a Statement of Purpose

FROG believes it would be desirable for LAFCO to adopt a set of findings and/or a statement of purpose to the beginning of its agricultural mitigation policies, similar to the "legislative purpose" section that often appears on state and federal legislation.

By including this statement of purpose, LAFCO would provide cities, landowners, developers, future LAFCO members, and the community at large with a clear, readily available, and lasting explanation of why it adopted these policies.

Not only would that facilitate community understanding, but it might also help to explain and defend the policies should they ever face a legal challenge.

This statement of purpose could address such things as:

1. The three basic purposes established for LAFCO's in its State enabling legislation,
2. The threat to Santa Clara County's remaining agricultural lands posed by future expansion of urban areas,

3. The roles of agricultural mitigation policies in implementing LAFCO's longstanding, countywide urban development policies and its State mandates
4. LAFCO's mandate under the California Environmental Quality Act (CEQA) to consider the impacts of its decisions on prime farmlands

This statement of purpose should also make clear that it is LAFCO's goal not just to protect agricultural lands, but also to seek to assure that these protected lands will remain in active agricultural production in perpetuity.

For example: LAFCO's goal is that productive agriculture, including urban-edge farmland, continue as a permanent contributor to the county's quality of life and, to the extent feasible, its economic diversity.

Two-Year Implementation Deadline Is Probably Not Workable

While FROG supports the goal of trying to ensure that mitigations that have been agreed to actually take place, it understands the concerns that the cities and the developer community have expressed regarding the "within 2 years" provision being unworkable from their perspectives.

They raise legitimate concerns that need to be addressed for the ag mitigation policies to be workable.

FROG has no solution to propose for resolving this problem. It simply suggests that LAFCO staff should work with the cities and the development community to find a mutually acceptable solution that assures that promised mitigations will occur in as timely a manner as is reasonably possible.

Need for Flexibility Regarding 1:1 Mitigation to Promote Quality Mitigation

FROG generally supports the goal of requiring 1:1 mitigation for agricultural land losses (i.e. that one acre of farmland should be permanently protected for each acre of farmland converted to other uses).

However, it believes that there is a need to allow for a certain amount of flexibility with regard to meeting that 1:1 goal to take into account the critical distinction between quantitative and qualitative mitigation.

A rigid 1:1, "acre for acre" mitigation requirement addresses only the quantitative dimension, and ignores the quality of the mitigation – which may ultimately be more important.

The quality of the mitigation involves more than just the total number of acres preserved or the type of soils affected. It involves the additional public benefits that derive from the mitigation, which may vary considerably depending on such factors as

- What mitigation method is used
- Where the mitigation takes place

With regard to the agricultural mitigation method used, it needs to be acknowledged that there are various ways that agricultural mitigation can be carried out to permanently protect farmlands.

Some mitigation methods provide a greater potential array of public benefits (and therefore provide a higher quality of mitigation), but may also be somewhat more expensive.

Fee title acquisitions (with subsequent leases to farmers), for example, may be somewhat more expensive than the purchase of agricultural conservation easements.

But the purchase of fee title also provides greater public benefits that purchase of agricultural conservation easements do not, including:

- Providing greater assurance that the protected lands will actually be used for productive farming
- Creating the opportunity to combine adjacent small parcels to create larger parcels that may better meet the needs of farmers
- Enabling agricultural practices that are more friendly to wildlife, and
- Allowing for future recreational trail development, which will also make it easier for residents of nearby urban areas to get safely to roadside stands where they can buy fresh produce and support local agriculture

If the only criterion to be used by LAFCO for agricultural mitigation is a rigid, quantitative 1:1 requirement, then LAFCO could be creating an economic disincentive to the use of higher quality, fee title purchase mitigations.

Therefore, FROG recommends that LAFCO's ag mitigation policies should allow for flexibility from a rigid 1:1 mitigation requirement to encourage higher quality ag mitigation methods, such as fee title acquisitions.

LAFCO ag mitigation policies should also allow flexibility to take into account the fact that some ag mitigation locations may provide more public benefits than others, but may involve more costly land acquisitions.

For example, providing permanent protection of farmlands nearer to urban areas has the potential to provide a number of benefits that acquisitions in more rural areas do not, including:

- Shaping and enhancing urban communities by creating permanent greenbelts between or adjacent to urban areas
- Creating closer links between working farms and nearby urban communities
- Focusing on lands most likely to be converted from agriculture

But farmlands closer to urban areas tend to be more expensive than lands in more rural locations. So a rigid 1:1 mitigation policy would, due to the cost differential, favor rural area acquisitions over urban edge acquisitions.

Therefore, FROG recommends that LAFCO ag mitigation policies should provide flexibility to encourage protection of farmlands closer to urban areas that provide more public benefits and are more threatened by development.

However, to the extent that LAFCO allows flexibility, it should be within the terms of stated objectives, guidelines and criteria to assure that they will be applied equitably and uniformly.

Agricultural Mitigation Should Occur in Close Proximity to Ag Land Loss

FROG recommends that LAFCO include in its agricultural mitigation policies a policy stating that mitigation should generally occur within the sphere of influence of the city in whose sphere the conversion of farmlands will occur.

We recommend this for several reasons.

First, we believe that the cities will be more accepting of LAFCO's ag mitigation requirements if the mitigation occurs within their sphere of influence and thus is more likely to benefit their city's residents.

Second, it will help to assure that agricultural lands that are preserved through agricultural mitigation will be more "accessible" or visible to more residents of Santa Clara County than if all the mitigation funds were channeled into just one area of the county.

Third, with specific regard to the Coyote Valley, it would assure that mitigations would occur within the Coyote Valley Greenbelt where they can help not only preserve agricultural lands, but also provide permanent protection to the only significant open space gap in urban development between San Francisco and Morgan Hill.



LAFCO of Santa Clara County
70 West Hedding Street, 11th Floor, East Wing
San Jose, CA 95110

September 14, 2006

Attn: Neelima Palacherla and Dunia Noel

Greenbelt Alliance commends LAFCO staff for diligently working on draft agricultural mitigation policies for the County of Santa Clara. Establishing minimum criteria helps cities, property owners and developers understand what is expected of them at the time of an annexation. Greenbelt Alliance agrees that ***mitigation must occur at least at a 1:1 ratio for all farmlands lost to development and that program costs should be added to the overall costs.*** Developing farmland should neither be convenient nor free. The goal is to encourage infill development, prevent sprawl and the inefficient waste of valuable farmlands.

Greenbelt Alliance would like to make several comments regarding the draft proposal:

First of all, we remain ***concerned about a potential loophole if landowners were to leave their land fallow for several years.*** If this were to happen, the hope is that mitigation would still be required if irrigation is feasible.

Secondly, in policy 9a, it states that the City must require an agricultural buffer on the land proposed for development. The idea behind this policy is good, but in the case of Coyote Valley where densities are fairly high, a buffer may not be feasible as it would mean even higher densities throughout the specific plan. ***However, a feathering approach on the edge of the development could achieve a similar result.***

LAFCO makes the case that mitigation lands or easements must be of equivalent quality and character. Again, in the case of Coyote Valley, the South Coyote non-urban buffer is made up of lands that are not of the same quality as Mid-Coyote lands. However, the goal in this community is to establish an urban-edge foodbelt/ greenbelt that will require some flexibility and creativity. Greenbelt Alliance is concerned that LAFCO's strong language regarding 'like for like' could preempt the preservation of South Coyote. We do agree that ***all mitigation lands should occur within Santa Clara County, preferably as close to the lands slated to be developed as possible.***

Finally, perhaps one of the most difficult issues to resolve is in regard to the timing and fulfillment of mitigation. According to LAFCO's policies, 'if the conditions of approval are not met within 2 years, the conditional approval will expire.' Greenbelt Alliance recognizes that once land has been annexed into the City, LAFCO no longer has control over mitigation requirements. It would seem that money to pay for mitigation would not become available until much later, when development is actually occurring. A longer time frame might be necessary to accommodate mitigation measures.

Again, the draft agricultural mitigation policies are a great step towards preventing needless annexations. The full cost of developing farmlands must be made apparent to all parties involved. Once farmland has been paved over, there is no bringing it back, and policies such as these take the next feasible course of action: protecting the remaining, threatened farmlands in the area.

Sincerely,

Michele Beasley
South Bay Field Representative



Bob Power
<bob@scvas.org>
09/08/2006 02:09 PM

To: neelima.palacherla@ceo.sccgov.org
cc:
Subject: Agricultural Mitigation Policies

Dear LAFCO Commissioners:

On behalf of the Santa Clara Valley Audubon Society, I wish to commend you for the thoughtful and comprehensive work that staff has done to create a far-reaching and critically important Agricultural Mitigation Policy.

We wish to reinforce three elements of this plan:

1. 1:1 replacement ratio of affected lands.
2. Acquisition and transfer of ownership within a two-year period
3. Requirement of payment of in-lieu fees to fully fund acquisition, maintenance and monitoring of these properties.

We strongly recommend a preference of fee-title acquisition of properties over the alternative of conservation easements.

Your implementation of these policies will ensure a lasting legacy of our agricultural heritage along with providing extraordinary open space values for Santa Clara County and the region.

Sincere appreciation to you and your staff in developing and implementing these policies.

Bob Power, Executive Director
Santa Clara Valley Audubon Society

**Save Open Space Gilroy
1495 Hillview Ct.
Gilroy, CA 95020**

Sept. 8, 2006

Local Agency Formation Commission of Santa Clara County
County Government Center, 11th Floor, East Wing
70 West Hedding St.
San Jose, Ca 95110

RE: Comments on LAFCO's Agricultural Mitigation Policies

Dear LAFCO Commissioners and Staff:

Save Open Space Gilroy (SOS Gilroy) appreciates the opportunity to comment on LAFCO's proposed new Agricultural Mitigation Policies. Our organization is firmly committed to the preservation of Santa Clara County's farmland. We are pleased that LAFCO plans to adopt agricultural mitigation policies and believe that the draft policies are well thought out.

Although the City of Gilroy adopted its own Agricultural Mitigation Policies in May of 2004, two major projects, the Hecker Pass Specific Plan and the Glen Loma Ranch Specific Plan, both narrowly escaped having to mitigate for the loss of over 300 acres of prime ag land as identified on the California Dept. of Conservation's "Important Farmland Map for Santa Clara County". The Gilroy policy relies solely on the results of the Land Evaluation and Site Assessment model (LESA) and it is through this reliance that a loophole exists.

Using the State Department of Conservation's Important Farmland Map of 2004 defines the land requiring mitigation very clearly. We are also very happy to see that LAFCO's draft policy 5.c uses the Storie Index Rating for determining prime ag land (rather than the LESA model) as well as the other five qualifications listed under "Definition of Prime Agricultural Lands". We support the statement under 5.b that says, "whether or not land is actually irrigated, provided that irrigation is feasible." The big loophole under Gilroy's Agricultural Mitigation Policy was exemplified by the Glen Loma Specific Plan. Land slated for development under the Specific Plan was not being irrigated, wells were capped and land was left fallow in order to lower the LESA score and avoid mitigation. Furthermore, all information about the land was provided by the property owners who had a vested interest in avoiding mitigation. The Hecker Pass Specific Plan is another example of how mitigation was avoided. There approximately 96 acres of prime ag land were "averaged" with about 328 acres of other land, resulting in a LESA score which narrowly missed the qualifying score of 40.

SOS Gilroy supports the sections 7. and 8. a., b. and c. on page 2 under the heading "Mitigation Requirements". They address the location of agricultural lands to be preserved. It is important that the mitigation lands are located in Santa Clara County. These sections will guide the cities in our county as to where LAFCO wants prime ag land preserved. Item 8. a is also important in providing that the mitigation must result in the preservation of ag land of equivalent quality. If this is implemented it should result in an urban growth boundary or buffer which will protect

additional ag land. Gilroy's ag mitigation measures specify mitigation land far on the east side of the valley, about a mile from the eastern 20- year growth boundary , east of Llagas Creek..

We are very glad to see, under "Timing and Fulfillment of Mitigation" number 13 on page 4 of the Draft Policy, that mitigation must occur within 2 years of the LAFCO conditional approval. It is appropriate that mitigation must be assured for one USA application before any additional applications are considered.

It is our understanding that when cities apply to LAFCO for inclusion into the Urban Service Area, they are planning to develop within a 5-year timeframe. So the two-year requirement for mitigation is not unreasonable. If LAFCO were to delete this requirement it is possible, through unforeseen circumstances or changes in city policies regarding development agreements, that developers could somehow avoid the mitigation altogether. We believe that having this policy in place is the best way to **guarantee** to LAFCO that the loss of prime agricultural lands is actually mitigated. If mitigation is not "locked in" before annexation LAFCO will have no assurance that it will actually occur. The two year time frame will assure that implementation of the preserved agricultural area will occur simultaneously with development.

We support LAFCO's Draft Agricultural Mitigation Policy and urge the commissioners to approve it as written. It addresses known weaknesses which have surfaced in Gilroy's Ag Mitigation Policy and shows a strong commitment by LAFCO that at least half of Santa Clara County's remaining prime agricultural lands will be preserved in perpetuity.

Sincerely,

David Collier

Carolyn Tognetti

Connie Rogers

For Save Open Space Gilroy

Alan C. Waltner
Direct Phone: (415) 393-2510
alan.waltner@bingham.com

September 8, 2006

VIA FIRST CLASS MAIL
And E-MAIL (neelima.palachera@ceo.sccgov.org)

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Neelima Palachera, Executive Officer
Santa Clara County LAFCO
70 West Hedding Street, 11th Floor
San Jose, CA 95110

RE: Comments on LAFCO's Draft Agricultural Mitigation Policies

Dear Ms. Palachera:

This letter comments on the August 14, 2006 draft "LAFCO's Agricultural Mitigation Policies." Our comments are written from the perspective of a prospective project located within the 20-year planning boundary of the City of Gilroy, but outside of the current City of Gilroy boundaries. Given this focus, we are not addressing in detail several broader issues raised by the Home Builders Association of Northern California (HBANC)¹ in their comments, which we consider well founded, but instead expand upon several specific issues presented by the potential application of the policy to projects seeking annexation into the City of Gilroy. In that regard, there are a number of features of the draft policy that we believe will impair, rather than promote, the apparent goals of the policy, while at the same time creating unnecessary barriers to needed residential and other development.

Our principal concerns are: (1) the timing provisions of the draft policy, particularly the 2 year expiration provision, (2) features of the draft policy that will lead to unnecessarily excessive costs for mitigation acquisitions, (3) ambiguities concerning the nature of the required mitigation, and (4) other provisions that are unduly restrictive and/or conflict with Gilroy's current agricultural mitigation policy, or that are ambiguous.

¹ We agree with HBANC that the proposed policy would intrude upon local agencies' land use authority, and also their responsibilities as lead agencies under CEQA. Also, as recognized in the HBANC comments, a significant problem with the draft policy is that a number of key issues are left unresolved, which will create unnecessary uncertainty and procedural hurdles in the annexation process. This lack of specificity both makes it difficult to comment on the proposal, and also threatens to create practical difficulties during future annexations.

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Our starting point is the City of Gilroy's "Agricultural Mitigation Policy" adopted May 3, 2004, which illustrates that the uncertainties and other problems with the draft LAFCO policy can be improved. Moreover, Gilroy's adoption of its own policy makes the creation of a separate and potentially inconsistent LAFCO policy redundant and unnecessary. Rather than establishing an open-ended policy of its own, LAFCO should either confirm the acceptability of Gilroy's policy in the annexation context, or engage in a dialogue with the City and affected parties to make any changes considered necessary by LAFCO. This is particularly true since many of the features of the draft LAFCO policy would regulate land use, which is the City's exclusive responsibility. Gov. Code Section 56886.

We have also used as a basis of comparison the Yolo County LAFCO's "Agricultural Conservation Policy" most recently amended in January 23 of this year (Yolo policy). As recognized by the staff of the Sacramento County LAFCO: "Yolo LAFCO has probably the most aggressive policy related to the preservation of prime agricultural land." January 5, 2005 Staff Report (<http://www.saclafco.org/meetings/docs/2005/01/Open-Space.pdf>). The Yolo policy is similar to the Gilroy policy in many respects regarding the treatment of the problematic issues addressed below.

The 2-Year Expiration Provision. Our first concern is with the timing provisions of the draft policy, under which the conservation easements must be obtained within 2 years of a "conditional approval" by LAFCO, after which the approval would be deemed to expire. For many developments, such a provision would place the project in a "Catch 22" situation since the uncertainty in the annexation would preclude (or at minimum severely impair) project financing, including the financing necessary to acquire the mitigation credits. The relatively short 2-year period also could require significant expenditures for mitigation credits before funds are reasonably available for those credits in the normal development cycle. This is particularly true for phased development projects, where only a small portion of the property is slated for development in the near term, but the policy would apparently require costly acquisition of all of the mitigation credits early on. That is the reason why vesting tentative maps and development agreements generally have a much longer lifespan than the proposed 2-year period.

The Gilroy policy contains a much more workable timing policy, requiring that a deferred payment or dedication agreement be entered into at the time of the initial land use approvals, but not requiring the completion of the mitigation until final map approval, or issuance of the first building permit if no map is required. Likewise, the Yolo policy requires the applicant "to have the mitigation measure in place before the issuance of either a grading permit, a building permit or final map approval for the site." Yolo policy at 9. This approach helps dovetail the policy with other provisions of the Planning and Zoning Law, while LAFCO's proposed 2-year expiration would not. LAFCO should not adopt timing provisions more stringent than contained in the Gilroy or Yolo policies.

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Unnecessary Restrictions on the Acquisition of Mitigation Credits. The draft policy would also unnecessarily increase the cost of the mitigation credits, by constraining the available market of qualifying properties. In that regard, the requirement that the qualifying properties be in areas that would be "impacted in the reasonably foreseeable future by development" could limit mitigation opportunities to relatively expensive properties on the immediate urban fringe. While we recognize that this factor requires some degree of balancing, LAFCO should be more strategic in helping to ensure that any required mitigation acquisitions are cost-effective.

In Gilroy's policy, eligible preservation areas are identified in an attachment broadly delineating "Preferred Preservation Areas." This specification of "preferred" preservation areas helps address the problem of inflated mitigation credits. The identified areas should be strategically placed so that they serve the goals of the policy, while being distant enough from areas slated for near-term development to ensure that the prices remain reasonable, and including sufficient areas to ensure that competitive market dynamics are maintained. By defining the acceptable properties to include those areas outside of the City's general plan boundary but within the City's sphere of influence, and requiring that the preservation lands be either "Prime" or of "Statewide Importance" and have an adequate water supply to support agricultural use, the Gilroy policy strikes a balance that focuses mitigation acquisitions in vulnerable areas, while ensuring that the costs of those acquisitions remain reasonable. The Gilroy policy also helps ensure reasonable mitigation prices by setting the in-lieu fee at the lowest appraisal of purchasing development rights in the preferred areas. Likewise, the Yolo policy establishes the in lieu fee at 35% of the average fee price of the most recent comparable undeveloped land purchases in the area. Your policy should be no more stringent.

Ambiguities Regarding the Required Mitigation. Paragraph 6 states that the mitigation should be by "replacement" while the policy more generally indicates that mitigation by "preservation" is the proposed approach. It would be infeasible, prohibitively expensive, and likely result in additional environmental impacts to require that new agricultural lands be created to replace those being lost. Both the Gilroy and Yolo policies require only preservation. The word "replacement" should therefore be changed to "preservation" in Paragraph 6.

Additional Concerns. Paragraph 6 also states that funds should be provided for the "promotion of agriculture" on the mitigation lands. This potentially expansive ongoing subsidy should not be included. Neither the Gilroy nor Yolo policies include such a requirement. Instead, these policies only require a minimal funding for ongoing administration.

Next, paragraph 17 of the proposal, which precludes approval of USA amendment proposals until the mitigation is "provided" for previous USA approvals, in all likelihood will unnecessarily suspend processing of such proposals and unfairly penalize future applicants for the actions of others. This provision should be eliminated.

The required agricultural buffers are required in the draft policy to be "sufficient" without any further guidance. In the Gilroy policy the width of agricultural buffers is specified at 150 feet. The Gilroy policy also excludes from the mitigation obligation a portion of the agricultural buffer and areas dedicated for city facilities such as parks, permanent natural open space, public school sites, roadway and other transportation facility dedications, and the like. All of these limitations and exclusions are reasonable and should be accepted by LAFCO.

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Conclusion. The current Gilroy policy appears fully consistent with LAFCO's draft. It establishes a 1:1 mitigation program with the same options of fee transfer, conservation easements, or payment of in lieu fees, specifies appropriate mitigation parcels in a manner that appears consistent with LAFCO's intent, and establishes other parameters such as the buffer area consistent with the approach taken in other cities that have been identified as a model by LAFCO. We therefore suggest, at least with respect to annexations to Gilroy, that the Gilroy policy either be confirmed or adapted as appropriate, in lieu of adoption of a separate set of policies by LAFCO.

We appreciate this opportunity to comment on this important policy document, and look forward to working with you and your staff as the policy develops.

Sincerely yours,



Alan C. Waltner
Partner

cc: Dunia Noel, LAFCO Analysis (dunia.noel@ceo.sccgov.org)

HOME
BUILDERS
ASSOCIATION



OF NORTHERN CALIFORNIA

September 7, 2006

Via mail and email (neelima.palacherla@ceo.sccgov.org)

Neelima Palacherla, Executive Officer
Santa Clara County Local Agency Formation Commission
70 West Hedding Street, 11th Floor
San Jose, CA 95110

Re: Comments on the Draft Agricultural Mitigation Policies

Dear Ms. Palacherla:

The Home Builders Association of Northern California ("HBANC") respectfully submits these comments on the captioned matter and requests they be included in the administrative record. HBANC is a nonprofit association with over 900 members that works to advance the interests of the homebuilding industry and new homebuyers in the Bay Area.

HBANC has significant concerns about the Draft Agricultural Mitigation Policies ("Draft Policies"). First, we believe the Draft Policies are beyond the scope of the authority granted to a Local Agency Formation Commission ("LAFCO") under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 ("the Act"). Second, legalities aside, we believe that the Draft Policies will frustrate rather than advance the Act's goals, which include promoting orderly development, providing an adequate supply of housing, and protecting agricultural land. We therefore request that the Santa Clara County LAFCO not adopt the Draft Policies.

I. The Draft Policies are *Ultra Vires*

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The Draft Policies would condition annexation proposals that involve converting prime agricultural land to other uses on compliance with a number of requirements. The requirements include providing mitigation for converted acreage at a ratio of not less than 1 to 1, and commanding annexing cities to adopt land use policies related to agricultural protection. HBANC believes that these requirements, and the others like them, are beyond the authority of a LAFCO.

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Unlike cities or counties, LAFCOs do not possess the broad police power that encompasses the authority to regulate development and impose mitigation measures as part of that regulation. In fact, the Act expressly prohibits LAFCOs from imposing any condition “that would directly regulate land use density, intensity, property development, or subdivision requirements.” Gov. Code Section 56375. *See also* Gov. Code Section 56886 (“none of the following terms and conditions shall directly regulate land use, property development, or subdivision requirements”). The Draft Policies’ requirements related to mitigating the impacts of projects quite clearly represent conditions that directly regulate property development—the very concept of mitigation is inherently tethered to the regulation of property development. LAFCO therefore cannot condition approval of an annexation proposal on “mitigating” impacts to prime agricultural land.

Of course, this is not to say that the issue of prime agricultural land is not a proper factor for LAFCOs to consider when weighing annexation proposals. Gov. Code Section 56377 requires LAFCOs to incorporate agricultural land considerations into its decision making under specified circumstances (along with other interests such as promoting orderly development and meeting regional housing needs)¹. However, nothing in Section 56377 or any other provision of the Act can be fairly read as authorizing LAFCOs to impose the mitigation requirements contained in the Draft Policies. For example, Sections 56375 and 56886 contain lengthy and specific provisions specifying LAFCOs’ powers generally and with respect to conditioning annexation proposals, but nowhere is there language sanctioning the kind of land use regulation embodied in the Draft Policies. To the contrary, as previously shown, the Act affirmatively and repeatedly prohibits it.

The Draft Policies’ requirement that cities adopt land use policies relating to agricultural protection is similarly beyond the powers delegated to LAFCOs by the Act. Absent preemptive federal or state law, cities are free to exercise their local police powers as they see fit. With respect to local land use regulation, the only provision in the Act which authorizes LAFCOs to dictate local planning and zoning action is Section 56375, which provides that LAFCOs may require a city to prezone an area as a condition to annexation. Again however, in keeping with the Act’s limitation on LAFCO’s regulation of property development, Section 56375 provides that “the commission shall not specify how, or in what manner, the territory shall be prezoned.” Except for this authorization to require cities to prezone, LAFCOs cannot dictate how cities exercise their local police power via conditions imposed on annexation proposals.

¹ It is important to note that the Legislature considered, and rejected, legislative language that would have prohibited LAFCOs from approving a project that might lead to development of prime agricultural lands or open space lands if there are other feasible alternatives. The 2000 *Growth Within Bounds* report, which formed the basis of the overhaul of the Act, recommended such a provision and language to that effect was included in Section 56377 of the introduced version of AB 2838. However, that language was deleted from the bill prior to its passage.

Finally, the Draft Policies are fundamentally inconsistent with the role of LAFCOs as responsible agencies under the California Environmental Quality Act ("CEQA"). CEQA Guidelines Section 15051, subd. (b)(2) provides that where a city prezones an area, the city will be the lead agency for any subsequent annexation and prepare the appropriate environmental document at the time, with LAFCO being the responsible agency. It is during the lead agency's CEQA process that questions regarding potential impacts to prime agricultural land, the significance of any impacts, and the necessity for adopting any mitigation measures are properly addressed. LAFCO, as a responsible agency, will be consulted and given the opportunity to express its views. Once the city completes the CEQA process, however, Guidelines Section 15231 provides that except in limited circumstances, the final EIR or negative declaration adopted by the lead "shall be conclusively presumed to comply with CEQA for purposes of use by responsible agencies...." The Draft Policies are clearly inconsistent with these provisions as they would establish LAFCO as the *de facto* lead agency with respect to determining whether a project will potentially impact prime agricultural land, whether mitigation is required, and the form it should take.

II. The Draft Policies Do Not Advance the Purposes of the Act

Legal issues notwithstanding, if adopted the Draft Policies would create unnecessary uncertainty and procedural hurdles in the annexation process. Throughout the Draft Policies, generalized statements are made to the effect that mitigation should be "adequate and appropriate," that City implementing policies should be "consistent," that mitigation lands must be "deemed acceptable" and "consistent" with the policy, that agricultural buffers be "sufficient," and that preservation lands "would otherwise be threatened/impacted in the reasonably foreseeable future by development" Open-ended statements such as these will make it very difficult for affected jurisdictions, landowners and developers to formulate effective annexation proposals, and will inhibit rather than promote orderly growth in the Bay Area. We note that the *Growth Within Bounds* report observed that "The loss of farmland has been a special concern in California's Central Valley. A lack of housing availability in the Bay Area and Silicon Valley...has contributed to expansion of suburban growth into the heart of California's most productive farming region."

We are also concerned with the timing provisions, under which conservation easements must be obtained within 2 years of a "conditional approval" by LAFCO, after which the approval would be deemed to expire. For many developments, such a provision would place the project in a "Catch 22" situation since the uncertainty in the annexation would preclude (or at minimum impair) project financing, including the financing necessary to acquire the mitigation credits. The relatively short 2-year period also could require significant expenditures for mitigation credits before those funds are reasonably available in the normal development cycle. This is particularly true for phased development projects, where only a small portion of the property is

slated for development in the near term, but the policy would apparently require costly acquisition of all of the mitigation credits early on. That is the reason why vesting tentative maps and development agreements generally have a much longer lifespan than the proposed 2-year period.

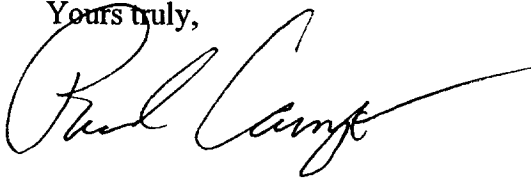
In addition to creating uncertainty, the draft policy could unnecessarily increase the cost of the mitigation credits, by constraining the available market of qualifying properties. In that regard, the requirement that the qualifying properties be in areas that would be "impacted in the reasonably foreseeable future by development" could limit mitigation opportunities to relatively expensive properties on the immediate urban fringe. While we recognize that this factor requires some degree of balancing, LAFCO should be more strategic in helping to ensure that any required mitigation acquisitions are cost-effective.

Also, the provision prohibiting approval of USA amendment proposals until the mitigation is "provided" for previous USA approvals, could unnecessarily suspend processing of such proposals and unfairly penalize future applicants for the actions of others.

Finally, in our view the fact that the City of Gilroy (and other cities) have adopted agricultural mitigation policies makes the creation of a separate and potentially inconsistent LAFCO policy redundant and unnecessary (in addition to being *ultra vires*). Rather than establishing an open-ended policy of its own, LAFCO should confirm the acceptability of policies such as Gilroy's in the annexation context, and/or engage in a dialogue with cities and affected parties to make any changes considered important by LAFCO.

HBANC appreciate the opportunity to comment and would be happy to meet to discuss our concerns.

Yours truly,

A handwritten signature in black ink, appearing to read "Paul Campos", with a long, sweeping horizontal line extending to the right.

Paul Campos
Vice President & General Counsel

cc: Dunia Noel, LAFCO Analysis (dunia.noel@ceo.sccgov.org)



"Jim Foran"
<foran@alum.mit.edu>

09/11/2006 04:17 PM

To: <Neelima.Palacherla@ceo.sccgov.org>
cc:
Subject: Comments on Agricultural Mitigation Policy Draft

My comments are in the attached document. These are my own views and have not been endorsed by the Authority or its Board.

Jim Foran
Director, District 2 & Vice Chairman
Santa Clara County Open Space Authority



Agricultural mitigation policy.d

Comments on

LAFCO's AGRICULTURAL MITIGATION POLICIES

Draft of August 14, 2006

LAFCO's mandate to preserve farmland is based on the public's interest in preserving agriculture as they have defined through their legislature. A public agency, the Santa Clara County Open Space Authority, has also been created by the legislature and charged with the role of preserving agriculture. Its jurisdiction includes virtually all of the farmland identified for preservation in this draft policy. The Authority has actively been engaged in preserving large amounts of agricultural land in Santa Clara County.

- 1) All agricultural land preserved as mitigation under this policy should be placed under conservation easement to the Authority.

The Authority is solely devoted to preservation and has an independently elected Board directly responsible to the public. It would be completely inappropriate to hand responsibility for such lands over to a private party. No private party is subject to any public governance. Any group wishing to subvert the requirements of LAFCO could organize an "agricultural conservation entity" or take over an existing entity and subsequently undo the effects of the required mitigation. A private corporation can simply go out of business once its aims have been accomplished with no consequences to those who would misuse LAFCO's trust. Even well respected private land trusts, such as the Nature Conservancy, have recently been exposed as having improper relationships with landowners.

Neither should cities be allowed to create their own agricultural preservation programs to administer mitigation lands. Cities are responsible for creating and maintaining developed areas not farms. To think that a city should be allowed to determine the cost of a program clearly represents a conflict of interest and would result in cities competing with each other to provide the most favorable treatment for developers. Cities eligible should be required to participate in the Authority and supply its funding.

- 2) Under no circumstances should it be assumed that any SCCOSA funding may be used to provide or maintain mitigation lands. Mitigation funding is the responsibility of the developers and the cities. The Authority may use its funding resources to augment mitigation efforts as it deems appropriate.
- 3) LAFCO's agricultural mitigation policy should be applied to lands developed outside the urban area under the county's authority, as well as to Urban Service Area expansions.
- 4) A 1:1 replacement ratio will only allow a preservation of one half of the remaining agricultural land. A higher ratio should be considered in recognition of the amount of such land that has already been lost in this county.
- 5) Agricultural mitigation land of the full required acreage must be identified and preserved before allowing the project requiring mitigation to proceed.

The practice of allowing in lieu fees can only be allowed if there is a guarantee that they will result in the preservation of the required acreage and quality of agricultural land. The longer it takes between the deposit of the fees and the purchase of the land the less the money will buy.

- 6) No stacking of mitigation requirements should be allowed.

That is that lands accepted for agricultural preservation cannot include any that are counted for the purpose of other types of mitigation such as land dedicated in order to obtain density bonuses for clustered development, lands counted for habitat mitigation, or mitigation for any other purpose.

- 7) Agricultural mitigation lands must result in the aggregation of lands of sufficient size to make

agricultural operation viable and practical.

At LAFCO's 2/16/06 Workshop it was noted that; 20, 40, and even 80 acre farms are difficult to make viable. Although 1,026 properties are classified as farms this includes ranches, nurseries, Christmas tree farms, vineyards, and greenhouses. Currently only 150 farms have sales of over \$100,000. Also 445 of the total only farm as a secondary occupation. The median size of a "farm" in the county is 11 acres and only 79 are larger than 500 acres. This number includes ranches which do not meet the definition of farmland for mitigation. Acceptable mitigation properties should only include those which can be aggregated into contiguous farms of at least 160 acres.

8) No land dedicated to nurseries, Christmas tree farms, ornamental flowers, turf farms, greenhouses, or other indoor uses should be deemed acceptable as agricultural mitigation land.

Priority needs to be focused on the preservation of true farms, particularly those which produce food for people.

9) Preserve buffer zones within the land to be developed.

Buffer zones of 200 feet need to be required within the urban edge. The buffers must be on the land that is being developed and not on the land that is being preserved. Buffer zone land should be placed under conservation easement to the Authority and funding for the maintenance of the buffer land must be dedicated by the development.

10) LAFCO should draft and specify a model Right to Farm Ordinance.

Any deviations or amendments of such an ordinance should not be allowed without LAFCO approval.

11) Any other appropriate measures to satisfy the intent of the policy should be additional and not in substitution to this policy.

12) All agreements should require that the Santa Clara County Open Space Authority be a party to the agreement.

All terms and conditions should be in compliance with the Agricultural Conservation Policies of the Authority. Any changes in those policies should be subject to LAFCO approval. The Authority may charge a fee for the consideration of any agreement or to cover any other administrative costs relative to the fulfillment of these requirements.

Jim Foran
403 Camille Circle #12,
San Jose, CA 95134

Coyote Housing Group, LLC

September 29, 2006

By Overnight Delivery

Neelima Palacherla
Local Agency Formation Commission of Santa Clara County
County Government Center, 11th Floor, East Wing
70 West Hedding Street
San Jose, CA 95110

Re: Comments on Draft Agricultural Mitigation Policies

Dear Ms. Palacherla:

This letter provides comments on Santa Clara LAFCo's Draft Agricultural Mitigation Policies (Draft Policy) on behalf of Coyote Housing Group, LLC (CHG), a group of property owners in the Coyote Valley area of San Jose. CHG is funding the preparation of a Specific Plan (CVSP) for the Coyote Valley by the City of San Jose and thus has a significant interest in ensuring that any Agricultural Mitigation Policies balance the need for planned, orderly and efficient development with the need to conserve agricultural land. We appreciate the efforts that LAFCo is undertaking to formalize an agricultural mitigation policy, but we have several significant concerns with the current Draft Policy:

- The permanent restriction of the use of lands to agricultural purposes as a condition of a boundary change would violate the provision in the Cortese-Knox-Hertzberg Act (CKH) prohibiting LAFCo from imposing conditions on proposals that "directly regulate land use;"
- If LAFCo has authority to mitigate the loss of agricultural land, it would be as a responsible agency through the California Environmental Quality Act (CEQA); the Draft Policy should be comprehensively redrafted so that it is within the CEQA framework. In particular, LAFCo must work with the Lead Agency on any mitigation measures in its role as a responsible agency;

- Mitigation under CEQA is only triggered when there is a finding of a “significant” impact on the environment. The Draft Policy does not address when conversions of agricultural land are “significant” and appears to assume that all conversions are significant;
- Because imposing mitigation is a CEQA function, the Draft Policy’s definition of agricultural land must follow CEQA’s definition of agricultural land;
- Even if it were applicable, the Draft Policy’s definition of “prime agricultural land” does not even follow CKH’s definition;
- The Draft Policy fails to adequately consider CKH’s policy goal of promoting planned, orderly and efficient growth;
- The Draft Policy does not include the consideration of the “feasibility” of mitigation requirements. In assessing feasibility of a mitigation measure, the Lead Agency must consider economic and social factors, along with environmental, legal and technological factors. (Guidelines 15131.)
- Qualifying mitigation lands are defined too narrowly and are unrealistic;
- LAFCo lacks the authority to require cities to adopt the measures described in Draft Policy Section 9;
- The qualifications an agricultural conservation entity must possess should be clarified;
- The Draft Policy requires that mitigation measures be in place too early in the process, particularly for projects with a long buildout horizon;
- The effective date of the annexation must be upon approval of the measure; a 2 year conditional approval is problematic. Delaying the effective date would make funding of construction and infrastructure infeasible , particularly for multi-year projects like Coyote Valley; and
- The Draft Policies take a “one size fits all” approach to mitigation that does not take into account the different circumstances facing Lead Agencies, and which unreasonably and unnecessarily stifles creative approaches that would accomplish the same objectives.

A. LAFCoS Are Not Authorized Under The CKH To Impose Direct Land Use Controls Such As Off-Site Mitigation For Agricultural Resources.

LAFCoS have limited powers in imposing conditions on boundary changes. We note that the Draft Policy fails to cite any legal authority allowing LAFCo to require agricultural mitigation as conditions to boundary changes and we do not believe any such authority exists in the Cortese Knox Herzberg Act (CKH). For example, Government Code sections 56301 and 56377 do not authorize the imposition of environmental mitigation measures but merely require LAFCo to “consider” certain competing policies when making decisions.¹ Further, the CKH expressly prohibits LAFCoS from imposing conditions which directly regulate land use. Gov. Code § 56375(a). By requiring that land use controls be imposed on off-site agricultural lands, the Draft Policy directly regulates land use.

CKH defines LAFCo’s powers and duties as follows: “To review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission.” Gov. Code § 56375(a). Although LAFCo may impose certain conditions on a proposal, it “shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements.” *Id.*

The CKH enumerates the limited circumstances under which LAFCo may condition annexation, but nowhere does the CKH identify conditions for the mitigation for the conversion of agricultural lands. Gov. Code §§ 56885.5, 56886. Section 56885.5, for example, provides that the range of issues for which a LAFCo is authorized to impose conditions is limited to the specifically enumerated matters set forth in Section 56686; procedural matters concerning related changes of organization; and requirements applicable to cities and districts which are to be disincorporated or dissolved. Gov. Code §§ 56885.5(a)(1)-(a)(4). Likewise, Section 56886 limits LAFCo’s conditioning authority to a list of enumerated matters which fall squarely within LAFCo jurisdiction, such as conditions concerning the levying of taxes and assessments, the transfer of funds, and the formation of new districts. Gov. Code § 56886(a)-(v). Despite the long and detailed list of items that may be conditioned by LAFCo, Sections 56885.5 and 56886 fail to include any reference to “agricultural land” or “prime agricultural land.” Instead, the Act makes clear

¹ LAFCo must consider “[t]he effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.” (Gov. Code § 56668(e).) And when “reviewing and approving or disapproving proposals which could reasonably be expected to induce, facilitate, or lead to the conversion of existing open-space lands to uses other than open-space uses,” LAFCo is directed to “consider” certain policies favoring the moving of the land use “away from existing prime agricultural lands in open-space use” (Gov. Code § 56377(a).) Conversely, LAFCo is encouraged to approve annexations that include open space that includes “nonprime agricultural lands.” (*Id.*, § 56377(b).)

that LAFCo has no authority to impose any condition that would “regulate land use, property development or subdivision requirements.” Gov. Code § 56886.

The Legislature’s intent to limit the ability of LAFCos to impose conditions on boundary changes is also evident in the legislative history of the statute and other agency documents. For example, the April 5, 2000 analysis prepared by the Legislature’s Assembly Committee on Local Government concluded that while “strengthen[ing] policies to protect agricultural and open-space lands” is an important factor for LAFCo to “consider,” LAFCo has no direct authority to impose land use regulations:

[R]evising the Act to reflect evolving legislative policy concerning the prevention of sprawl and encouragement of orderly development is consistent with the Act’s original intent and within the Legislature’s purview. This includes an understanding of the interrelationship between water supply and growth, the threat presented by the loss of agricultural land to development, and the importance of encouraging development within already developed areas where possible and in accordance with regional growth policies where they have been articulated. AB 2838 only requires LAFCos to *consider these issues* when making decisions and *appears not to preempt any local government land use authority*.

Assembly on Committee on Local Government, AB 2838 Bill Analysis (April 4, 2000), at 12-13 (emphasis added).

Here, LAFCo’s Draft Policy would result in a “direct regulation of land use” because it would require, as a condition of approval for a proposed boundary change that would result in the conversion of prime agricultural land, that certain off-site land *be restricted in perpetuity to agricultural use*. Regardless of the words used to describe this requirement, such a condition “directly regulates land use” and the future property development of the conserved land.

Hence, while LAFCo approvals may necessarily carry land-use implications, the statute explicitly limits LAFCos to indirect forms of land use regulation, such as requiring pre-zoning of areas to be annexed, or controlling access to facilities and services such as infrastructure. A LAFCo that attempts to directly regulate land use exceeds its authority

under the statute. Here, a condition requiring off-site agricultural mitigation is clearly a direct land use control, and thus is not authorized under the CKH.²

B. "Mitigation" Of Agricultural Land Impacts Can Only Be Imposed Through The CEQA Process.

The California Supreme Court has stated that CKH "dovetails with CEQA" and the two statutes must be "harmonized." *Bozung v. Local Agency Formation Com.*, 13 Cal. 3d 263, 282 (1975). The way to "harmonize" the statutes with respect to agricultural mitigation is for LAFCo to work with CEQA lead agencies to develop policies encouraging the imposition of mitigation for "significant" agricultural conversions as part of the lead agency's EIR. The Draft Policy should be comprehensively overhauled to reframe it in the CEQA context.

Here, we note a few of the fundamental changes that would be required to harmonize LAFCo's authority under the CKH Act with CEQA for purposes of pursuing its policies.

- Under CEQA, LAFCo acts on most annexations as a responsible agency, rather than a lead agency. (CEQA Guidelines section 15096.) Responsible agencies play a consulting role, not a lead role, in the development of mitigation measures on a project subject to CEQA. Under section 15096, a responsible agency must first coordinate with the lead agency on its EIR, and further, the responsible agency must "comply with CEQA by considering the EIR prepared by the lead agency." *Id.* Responsible agencies may consult with the lead agency over the scope and content on that EIR and may comment on the perceived "shortcomings in the EIR . . . or on additional alternatives or mitigation measures which the EIR should include." *Id.* If a responsible agency believes the EIR certified by the lead agency is inadequate, it may (a) challenge the EIR in court; (b) prepare a supplemental EIR (but only if the circumstances calling for the preparation of a supplemental EIR are present); or (c) assume the role of lead agency if the criteria are met. *Id.*

² LAFCo's current Urban Service Area Policies (USA Policies) are more in line with the limitations placed on its powers. Sections 6-8 of the current USA Policies, which refer to LAFCo's policy with respect to USA expansions into areas that include agricultural land, are worded such that LAFCo "discourages" certain types of growth that may impact agricultural land and "encourages" cities to take steps to minimize impacts on agricultural lands. What the USA Policies do not do are condition approval on the imposition of direct land use controls such as off-site mitigation for agricultural resources. It recognizes that those types of land use determinations are not for LAFCo to make. LAFCo's current USA Policies more accurately reflect its statutory authority.

- In determining the significance of impacts and the appropriateness of mitigation for those impacts to “agricultural land” and “prime agricultural land”, LAFCo must rely on the definition of those terms in CEQA and not the CKH. Under CEQA, “Agricultural land” means “(a) prime farmland, farmland of statewide importance, or unique farmland, as defined by the United States Department of Agriculture land inventory and monitoring criteria, as modified for California.” In those areas of the state where lands have not been surveyed for the classifications specified in subdivision (a), “agricultural land” means land that meets the requirements of “prime agricultural land” as defined in paragraph (1), (2), (3), or (4) of subdivision (c) of Section 51201 of the Government Code. Pub. Res. Code § 21060.1. Prime farmland, farmland of statewide importance and unique farmland are not the same type of farmland.
- There are two significant differences between CEQA’s definition and the definition currently proposed in the Draft Policy. First, farmland of “local importance” is not even considered to be “agricultural land” under CEQA, much less “prime agricultural land.” Second, under the Draft Policy, land would qualify as prime agricultural land if it meets *any* of the far-reaching criteria proposed in the Draft Policy. Under CEQA, in contrast, only if the land has *not* been surveyed would the definitional inquiry extend to the criteria in Gov. Code §51201.³
- Under CEQA, mitigation is only required for “significant” impacts. Pub. Res. Code § 21002.1(b). A significant impact “means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.” CEQA Guidelines § 15382. In contrast, the Draft Policy appears to assume that any conversion of any agricultural land is a significant impact since its definition of “prime agricultural land” appears to include virtually any agricultural land.
- In order to determine whether a project’s impacts to agricultural land are significant, CEQA suggests that only impacts to “prime agricultural land, farmland of statewide importance and unique farmland” merit a determination of significance and thus mitigation. (See Appendix G, CEQA Guidelines.) *Conversion of farmland of local importance is not listed as a significant impact.* Further, the CEQA Guidelines suggest that lead agencies refer to the California Agricultural Land Evaluation and Site Assessment Model (LESA)

³ Draft Policy sections 5(b) through 5(f) largely mirror the sections of Gov. Code § 51201 that the CEQA definition references.

prepared by the California Department of Conservation. Pub. Res. Code § 21095; CEQA Guidelines, Appendix G. LESA is a point-based approach for rating the relative importance of agricultural land resources based upon specific measurable features and provides agencies with a consistent framework for determining whether a particular project's impacts on agricultural resources are significant. The LESA model weighs various factors and the project is given a single numeric score, which is used to determine the significance of a project's impacts to agricultural land. Although not required under CEQA, the LESA model is widely used throughout California and LAFCo should consider adopting it in the Draft Policy as a measure of significance. It promotes a consistent basis for finding significance and allows for a much more nuanced approach than the Draft Policy currently proposes.

- In addition, CEQA requires that only "feasible" mitigation measures are adopted. Pub. Res. Code § 21002.1(b). A feasible mitigation measure is one that is "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." CEQA Guidelines § 15364. The Draft Policy does not incorporate any concept relating to feasibility. The Lead Agency may factor in policy considerations when determining feasibility of preserving mitigation land. "Feasibility" under CEQA also encompasses "desirability" to the extent that desirability is based on a balancing of the relevant economic, social and technological factors. The Lead Agency is entitled to rely on and balance these policy decisions when evaluating the feasibility of various mitigation measures and project alternatives.

C. Even If The CKH Definition Of Prime Agricultural Lands Were Applicable To A CEQA Inquiry, The Proposed Definition Is Broader Than The Definition In CKH.

The Draft Policy not only ignores CEQA definition of prime agricultural land, as explained above, it also broadens CKH's definition of prime agricultural land. Under the CKH, "prime agricultural lands," is defined as follows:

"Prime agricultural land" means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:

- (a) Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service

land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.

(b) Land that qualifies for rating 80 through 100 Storie Index Rating.

(c) Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Handbook on Range and Related Grazing Lands, July, 1967, developed pursuant to Public Law 46, December 1935.

(d) Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.

(e) Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years.

Gov. Code § 56064. In addition, the CKH defines “agricultural lands” to mean:

Land *currently* used for the purpose of producing an agricultural commodity for commercial purposes, land left fallow under a crop rotational program, or land enrolled in an agricultural subsidy or set-aside program.

Gov. Code § 56016.

Sections 5(b)-(f) of the Draft Policy incorporate most of CKH’s definition of prime agricultural land. However, section 5(a) *adds* to this definition lands designated by the Department of Conservation as prime, *of statewide importance, unique farmland and lands of local importance*. As explained above, even if the definition is to include lands designated by the Department of Conservation, “farmlands of *statewide importance, unique farmland and farmland of local importance*” should not be included in the definition of “prime farmland” as these kinds of farmland are not included in the CKH definition of “prime agricultural land,” and are distinct from “prime agricultural land.” In addition, the draft

policy definition should incorporate the idea that the land must “currently” be used for agricultural purposes, if its conversion is to be considered significant.

D. The Draft Policy Fails To Balance The Promotion Of Planned, Orderly And Efficient Growth.

Assuming the CKH provides LAFCo with authority to impose mitigation on boundary changes (which it does not), the Draft Policy is too rigid and fails to adequately consider whether a proposal promotes orderly growth in accordance with CKH. Under CKH, LAFCo is charged with “considering” two important – but sometimes conflicting – policies: (1) the provision of land for orderly development and efficient service delivery and (2) the preservation and protection of open space and prime agricultural land. Gov. Code § 56001. LAFCo’s challenge is to balance these considerations in a manner that fairly promotes *both* objectives. The Draft Policy’s approach tilts too far towards the preservation of agricultural land and fails to factor the need for development in a planned, orderly and efficient manner.

LAFCo’s current approach lacks the flexibility to account for factors present in individual proposals that may call for an environmental mitigation requirement of less than a 1:1 replacement ratio. While we recognize the importance of Santa Clara County’s farming heritage, Santa Clara County is also under tremendous growth pressure and has a continuing need for development, particularly residential development. Lead Agencies, as well as LAFCo, must balance these needs. The promotion of orderly growth may warrant a more flexible approach for certain proposals. There should be discretion to vary from the replacement ratio if doing so would promote the planned, orderly, and efficient development of an area and/or if the need to balance other policy objectives (such as encouraging the production of affordable housing) makes a 1:1 ratio infeasible.

Lower ratios may also be warranted by specified circumstances. For example, the land being conserved may be of a higher agricultural value than the impacted land or the land to be conserved may currently not be in active agricultural production, but under the mitigation plan, it will be put to productive use. Such circumstances would warrant lowering the mitigation ratio. More intensive management of the conserved land, improvements to the land, and/or the contribution of funds to manage the property in perpetuity may also justify a credit against the mitigation requirement or a lower ratio.

Other factors to consider in determining the feasibility of mitigation may be:

- Cost of acquiring preservation rights;
- Ability to find a suitable conservation manager;

- Impact of mitigation strategy on the cost of housing;
- Impact of mitigation strategy on other policy objectives, such as the promotion of affordable housing and the attraction of jobs;
- Impact of mitigation strategy on the project as a whole when taken together with all other project mitigation costs, infrastructure costs, public facilities requirements, etc.;
- Availability of agricultural land to be preserved inside and outside of City;
- Desirability of preserving lands outside the City;
- Long-term viability of farming in and near the City;
- Long-term viability of farming on lands impacted;
- Quality of land to be converted;
- Quality of land to be preserved through mitigation.

E. The Draft Policy Should Encourage Development Of Non-Prime Agricultural Land First.

The Draft Policy's failure to distinguish mitigation requirements for agricultural lands of varying qualities potentially violates Gov. Code § 56377. Under that section, LAFCo "*shall*" consider a policy of directing development away from prime agricultural land to non-prime agricultural land, unless that action would not promote the planned, orderly and efficient development of an area. Gov. Code § 56377. By treating some non-prime agricultural land (such as farmland of local importance) the same as prime agricultural land, as that term is defined in the Act, the Draft Policy does not direct development away from prime agricultural land because a developer has no incentive to propose a project on lower grade agricultural land.

To encourage the development of non-prime agricultural land first and prime agricultural land last, agricultural mitigation requirements should vary depending on the quality of the agricultural land. While mitigation on a 1:1 ratio may be appropriate for lands designated as "Prime" by the Department of Conservation, lesser or no ratios should apply to lands of "Statewide Importance" and "Unique Farmland." In this way, development would be directed towards lesser quality land first. Sacramento LAFCo is currently considering

such a policy. We would support a policy that would only require mitigation ratios for prime agricultural land, as properly defined.

F. Determination Of In-Lieu Fees Amount Should Be Clarified.

Section 6(c) of the Draft Policy permits mitigation by the payment of in-lieu fees to an agricultural conservation entity sufficient to fully fund the acquisition of agricultural lands or conservation easements and the operation and management costs. However, the Draft Policy fails to describe how the in-lieu fee amount will be determined. This procedure needs more clarification.

G. Option To Buy Credits With A Mitigation Bank.

We support adding a new subsection to Section 6 which would allow for the purchase of mitigation credits from an agricultural mitigation bank. Such an option would accomplish the same goals as the payment of in-lieu fees, but would provide for increased options for the property owner.

H. Qualifying Mitigation Lands.

Sections 7 and 8 describe several qualifications mitigation lands "must" possess, which, when taken together, we believe would severely limit available sites and may be unrealistic. The language should be revised so that these are factors LAFCo must consider when approving a mitigation plan, but that LAFCo has the discretion to approve the mitigation even though not all factors are present, particularly if it finds that the proposal promotes the planned, orderly, and efficient development of an area.

While there should be a preference that mitigation lands be located within Santa Clara County, this may not always be possible while also meeting the other goals. Section 7 should be revised to say that lands *should* be located in Santa Clara County, if possible, but if not, they should be located close to the affected area, or close to other areas designated to provide regional benefits (e.g., flood control, recreation, habitat conservation).

Requiring that land is of an "equivalent quality and character" is also too strict. This should be modified so that land is "reasonably equivalent." This could be further defined to mean that the mitigating land scores no more than 20% less than the mitigated land's average Storie Index.

We also support introducing a concept of mitigating with land of "equivalent value." For example, if the land to be conserved is of a higher quality than the impacted land, fewer acres would need to be conserved. Not only would this allow property owners greater flexibility when locating acceptable land to use as mitigation land, but it also provides an

economic incentive to preserve the highest quality agricultural land, which is one of the goals in CKH.

I. LAFCo Lacks The Authority To Require The City To Adopt Measures.

Section 9 requires that LAFCo require the city to adopt specific measures to preserve adjoining agricultural lands, to prevent their premature conversion to other uses, and to minimize potential conflicts between the proposed urban development and adjacent agricultural uses. Nothing in CKH gives LAFCo the authority to require cities to take these steps. Sections 9(b) and (c) are particularly egregious as they purport to require that cities pass legislation and develop city programs. These requirements grossly overstep LAFCo's role in the development process.

In addition, Section 9 would violate Gov. Code § 56886, which prohibits LAFCo from imposing conditions that directly regulate land use. Section 9 requires that LAFCo ensure that the city takes steps "to preserve adjoining agricultural lands [and] to adopt measures to preserve adjoining agricultural lands." Requiring that cities take such steps is a direct regulation of land use.

J. Clarification Of Qualifications Of Agricultural Conservation Entity.

The agricultural conservation entity qualifications in Section 10 need further refinement. How is the entity's "commitment" to preserving local agriculture measured? Who makes this determination? How is the mandatory "must" language reconciled with the language the entity "preferably" have a record of agricultural conservation? We would suggest that rather than requiring that an entity "must" have these characteristics, the Draft Policy should require LAFCo to make a finding that the entity has the capacity to hold and properly manage the agricultural lands in question and that it should "consider" the factors in Section 10 when making this determination.

K. The Draft Policy Requires That Mitigation Measures Be In Place Too Early In The Process and 2 Year Conditional Approval is Infeasible.

CHG is particularly concerned about certain timing elements contained in the Draft Policy, particularly as they may impact developments with a long buildout horizon.

Section 12(a) requires that a mitigation plan be submitted at the time the proposal is filed and that the plan must include a signed agreement between the property owner and the city or the agricultural conservation entity. This is far too early in the process to require a binding mitigation plan, including a recorded agreement. Such an agreement may be necessary eventually, but not at the point that a proposal is filed with LAFCo, which may be many years before any land is actually impacted.

Section 13 requires that, as a condition of approval, the agricultural lands or conservation easements must actually be acquired and transferred or the in-lieu fees be paid within 2 years of LAFCo's conditional approval. Section 14 states that the effective date for a boundary change will not be until the fees are paid and LAFCo issues a Certificate of Completion. Securing an effective date may be particularly important for the financing needs of property owners. This is unacceptable for phased projects or projects with long buildout horizons, such as projects to be built out over 10 or 20 years. First, property owners would not be able to obtain financing for construction of projects and related infrastructure if the annexation is conditional. Lenders, investors and bond financing underwriters would require the annexation to be effective prior to funding of construction. In addition, for multi-phase projects, the developer would be required to expend significant capital fully funding agricultural mitigation for lands that would not be impacted for years or decades, or for a phase of the project that is ultimately not approved or abandoned. This is an unnecessary and burdensome requirement.

Fairness and feasibility mandates that the timing of the financial burden on a property owner should coincide with the timing of the impact on the prime agricultural land. We believe that a better solution would be to allow the property owner to issue a letter of credit or a bond initially, but the actual payment of the in-lieu fee or transfer of property would not be required to take place until some later event that more closely relates to when the land is impacted, such as at the time of issuance of the building permits.

L. The Effective Date of the Annexation Should Not Be Delayed.

The Draft Policy suggests that the effective date of the boundary change would not be until after LAFCo certifies completion of the proposed "conditions of approval." We have already explained that we believe that LAFCo lacks the authority to impose agricultural mitigations on boundary changes because it directly regulates land use. A delay in the effective date of the boundary change would also attempt to regulate land use in a manner beyond LAFCo's authority.

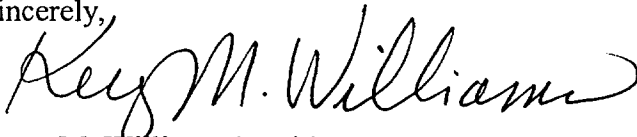
M. The Draft Policies "One Size Fits All Approach" is Unreasonable and Unnecessarily Restrictive.

Managing and balancing growth and development are complex and challenging issues which cities all over the state are facing. The Draft Policies purport to treat all annexation proposals the same. Although we support the goal of providing clear direction and transparency to cities and property owners, we believe it is unrealistic to expect each proposal to fit within the same mold. The CVSP, for example, is one of the largest master planned communities ever undertaken in California. The goal is to create a vibrant, compact, fully integrated, mixed-use, transit-oriented, walkable community based on smart growth principles and the highest standards of sustainability. To help address the shortage of

affordable housing in the region, the CVSP includes over 5,000 units of below market rate housing and another 20,000 units targeted towards middle income families. This plan will be phased over 25 to 30 years. One of the major policy objectives of the plan established by the San Jose City Council is to provide funding to permanently protect the South Coyote Greenbelt, including financing to restore and perpetuate the viability of small-scale agriculture. The CVSP, which will have significant impacts to agricultural land (as yet undetermined pending release of the Draft EIR), would like to accomplish its required agricultural mitigation in the Greenbelt. The program, as currently envisioned, would collect fees upon issuance of building permits and the funds would be conveyed to a land trust, which would then make discretionary purchases of land for agricultural preservation or restoration purposes in the Greenbelt. Funds might also be made available for improvements, the establishment of a "chamber of commerce" to promote agricultural production and market local goods, and funds to manage the lands over time. As currently drafted, it is unclear whether the CVSP program could be implemented within the Draft Policy framework. We believe the Draft Policies should be flexible enough to accommodate and encourage creative mitigation proposals from the Lead Agencies as long as they accomplish the same goals and objectives.

Thank you for providing us with the opportunity to comment on this matter. We look forward to working with you to develop appropriate and feasible mitigation policies.

Sincerely,



Kerry M. Williams, President
Coyote Housing Group, LLC

cc: LAFCo Board Members
City of San Jose City Council
Joseph Horwedel, Interim Planning Director City of San Jose
Laurel Prevetti, Deputy Planning Director City of San Jose
Vera Toderov, City Attorney City of San Jose

Regional Open Space

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

September 26, 2006

Ms. Neelima Palacheria, Executive Director
LAFCO of Santa Clara County
County Government Center, 11th Floor, East Wing
70 West Hedding Street
San Jose, CA. 95110

Re: Draft Agricultural Mitigation Policies

Dear Ms. Palacheria,

Thank you for the opportunity to comment on the LAFCO of Santa Clara County Draft Agricultural Mitigation Policies (Draft). The Midpeninsula Regional Open Space District (District) offers the following comments for consideration.

1. One of LAFCO's stated primary mandates is "to preserve agricultural lands and discourage the premature conversion of agricultural lands." In light of this mandate, we recommend that LAFCO reevaluate approving any development on prime agricultural land.
2. If development is to occur on agricultural land, we believe that the 1:1 replacement ratio proposed in the Draft is the minimum replacement acceptable. Again, with the primary mandate to preserve agricultural land, the proposed replacement ratio has the theoretical potential to reduce the acreage of viable agricultural land by 50%. Further consideration should be given to increase beyond the 1:1 replacement ratio, based upon a set of measurable criteria.
3. We recommend that the agricultural conservation entity receiving the mitigation acreage be limited to a public agency to ensure permanency, and that the ideal acquisition and transfer would be in the form of a conservation easement, as opposed to a transfer of fee title. It is also recommended that an annual report be prepared by all agricultural conservation entities, to document acquisitions, transfers, payments of in-lieu fees, as well as, land management and monitoring costs.
4. The payment of in-lieu fees, as proposed, should only be accepted as a last resort. To discourage this practice, a substantially higher replacement ratio should be used. Perhaps a minimum value ratio of at least 2:1 should be considered.

The District appreciates the work by LAFCO staff in preparing the Draft Policies, and the opportunity to comment.

Sincerely,


L. Craig Britton
General Manager

LCB:mb:jb

BLACKROCK
% Golf Club at Boulder Ridge
1000 Old Quarry Road
San Jose, CA 95123

September 22, 2006

To: City of Morgan Hill
Regional Land Use and Transportation Sub-Committee

RE: Draft, LAFCO Agricultural Mitigation Policies

Dear Sub-Committee,

Please accept this letter as our opposition to the proposed "Draft Agricultural Mitigation Policies" as proposed by the LAFCO staff.

We believe that financially viable agriculture should be recognized and remain in production as long as possible; however as part of the Urban Limit Line committee, we received significant testimony from Morgan Hill landowners/farmers who, in the past had significant farming operations, testify that in the today's real world farming is not feasible in the Morgan Hill area. Encroaching development, Morgan Hill's share of the Bay Area's housing, and the price of land, utilities and transportation has severely hampered all agricultural production in our area.

We opposed the Draft Ag Mitigation Policies:

1. Definition of Prime Ag lands per LAFCO proposed policy sets no minimum acreage as the "start acreage" for viable agricultural. In our case, we have a parcel of property 18+ acres at the intersection of two major thoroughfares, surrounded by development as dense as 7 units per acre. We have an acre+ prime soils at that intersection. A vacant two acre parcel just to west has been MAI appraised at \$700,000; a return of 5% per annum would yield \$35,000 yet the draft ag proposal would yield a return of \$800.

2. Mitigation requirements of "conversion" of prime agricultural lands must mitigate at not less than 1:1 ratio; all lands presently outside Morgan Hill's USA are considered by LAFCO as ag lands. Presently, the City is considering the long term development possibilities for our southwest quadrant. The Urban Limit

committee also consider this area. In our opinion the City should not close its doors to future development. Again, we had testimony from farmers in this quadrant who said that agricultural production has not been financially feasible for more than a decade and that any farming now in operation was a only holding operation to maintain the land.

3. Parallel/equivalent land is to be provided for mitigation with fees; these requirements are nothing more than a "taking". The LAFCO mitigation proposal "must result in the preservation of land (of)...equivalent quality and character...is located in an area that would otherwise be threatened/impacted in the reasonably foreseeable future by development. Mitigation property should not be property that is reasonably possible for future development.

4. This proposal would create another government bureau.

Unfortunately, we just received this LAFCO draft yesterday and did not have sufficient time to fully critique it. We would ask this subcommittee to allow sufficient time for us to respond; and, also allow our attorney time to respond.

Thank you,

A handwritten signature in cursive script, appearing to read "W. Roche Garcia".

W. Roche Garcia
Blackrock

October 1, 2006

TO: Neelima Palacherla, LAFCO Executive Director
FROM: Patrick Congdon, General Manager
SUBJECT: Comments on LAFCO Draft Agricultural Mitigation Policies

I would like to thank you for the opportunity to comment on the Draft Agricultural Mitigation Policies (dated August 14, 2006) and offer the following comments:

Page 1, Number 5, Definition of Prime Agricultural Lands

"Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre..."

As the majority of grazing lands are outside the jurisdiction of local municipalities I find this qualification curious. If the County pursues an agricultural mitigation policy in the future, would they be strongly encouraged to have a similar definition of Prime Agricultural Land. As I look at the "Santa Clara County Important Farmland 2004 Map", how does one say that an applicant has to mitigate for grazing land on one side of the fence but directly on the other in county jurisdiction they don't. Both properties would meet the criteria as outlined in the LAFCO policy but only one would be required to mitigate. I understand the trigger is development, but what the future holds for development on county lands is still in question.

Not all grazing land identified on the 2004 Map would meet the LAFCO definition but a good percentage would and where would you mitigate for the loss of this land in Santa Clara County. It would have to be done outside city sphere of influence and then does that mean that county land being used for mitigation meets the LAFCO definition of prime agricultural land. It would seem to create confusion as to what is prime agricultural land.

Development pressure appears to be less on lands outside city sphere of influence but even large estate homes and associated support structures can impact grazing operations. If grazing lands within the city are under development pressure and county lands are as well, shouldn't they be treated the same.

Should grazing truly be in the same category as farmland?

It may be more appropriate to categorize grazing lands as urban buffers, viewshed, open space or some other designation that doesn't convey the importance that prime farmland, farmland of statewide importance, unique farmland or farmland of local importance do.

One last thought on this section. In many cases Department of Conservation and NRCS will not fund projects in the grazing category. It may not be possible to complete a conservation project without their funding given changing land values.

Page 2, Number 6, Mitigation Requirements

Although other examples exist, I think it will take a considerable amount of time to develop standards for determining appropriate in-lieu fees that cover acquisition, management and enforcement.

Before a Conservation Entity (CE) could consider taking on the responsibility of managing protected lands a program that meets LAFCO's requirements and a City would have to be in place. It sounds like LAFCO's intent is that the CE develops the program. This will take time and LAFCO support. Will LAFCO commit

to doing this?

When was Gilroy's program approved. To my knowledge the program has not been fully implemented. One problem is determining the fair market value of a property. How many appraisals does one seek out and how often. If one mitigating for loss of agriculture goes out and acquires agricultural lands, who manages them and at what cost. Too many unknowns exist.

The general policy language is adequate but several things need to be identified:

- What role will LAFCO play in the future?
- How secure are private entities in long term management of agricultural lands?
- Ultimately who determines if the management fees are sufficient to carry out the requirements of LAFCO or a City?
- Determination of who, how and what constitutes an appropriate appraisal for fee and easement lands.
- Who determines where lands will be purchased or placed in easement. If banking lands, who approves the bank?
- Who certifies the land as meeting the requirements of the mitigation?
- What happens in 30 years when the level of agriculture in the valley changes. Is there a realistic term of protection, 30, 50 or 100 years?
- Where does the Williamson Act play into the equation? Would Department of Conservation have a role in approving what meets protection levels?

Page 2, Number 7, Mitigation Requirements

Is it realistic to think that all agricultural mitigation will take place in Santa Clara County?

Page 2, Number 8a

Can grazing lands meet the criteria in this section? Prime Agricultural Land – Storie Index – Land Capability Classification rating

Page 2, Number 8b

How is reasonably foreseeable future quantified?

Page 2, Number 8c

If not preferably, what will be accepted?

Page 3, Number 9a

Who decides if a buffer is sufficient, LAFCO?

In general, it appears that a city takes on a significant amount of responsibility to fulfill LAFCO requirements. Is it realistic to think that cities will have a program in place to meet these obligations in the next several years? With existing infrastructure needs, it could be years before a city finalizes a plan. I realize that this would be triggered when a city proposes changes to USA, but when are those anticipated dates. Should the process for developing a LAFCO policy be placed on a longer timeline?

Page 3, Number 9c

As much as I want this to happen, it seems like a difficult task for a city to complete. Unless funding is

provided in the management endowment, program funds would have to come from some other source. Given the financial state of many cities, funding for agricultural promotion may become a very low priority.

Page 3, Number 9d

What are other appropriate measures? It would be problematic to get any legal counsel to agree to this within a formal agreement.

Page 4, Number 12a

The agreement may not be a recordable item. The County Recorder's Office will usual record fee and easement transactions but beyond that, they usually do not record Agreements. By Agreement are you referring to the Baseline Documentation Report?

Page 4, Number 13-17

As I stated in the meeting, I don't believe a 2 year period will work. It can take several years for all documentation to be in place and a 5 year period or longer period is more practical.

WHY IS IT IMPORTANT TO PRESERVE AGRICULTURAL LANDS IN SANTA CLARA COUNTY?

Loss of Agricultural lands in Santa Clara County

Agriculture has thrived in Santa Clara County, covered with orchards and farms, it was once known as the "Valley of Hearts Delight". Now only a small portion of the valley is in agricultural production and those lands remain vulnerable to urbanization. High land prices and encroaching urban development combined with changing markets, foreign competition, and rising labor costs are challenging the viability of agriculture and increasing the pressure to convert the remaining agricultural lands into non agricultural uses. Just within the last 20 years, Santa Clara County has lost over 11,000 acres of this valuable farmland to urban development. There remain less than 39,000 acres of agricultural lands that contain the high quality soils that have allowed agriculture to flourish in Santa Clara County. This is less than 5% of the total land within this county. Once this land is lost to urban uses, it is not likely that it will ever be returned to farming.

Productive agricultural land is a finite and irreplaceable natural resource. Fertile soils take thousands of years to develop. Creating them takes a combination of climate, geology, biology and good luck. So far, no one has found a way to manufacture them. Some of the most productive soils in the state, nation, and the world are located in Santa Clara County.

Benefits of Agriculture

There are significant benefits to preventing the further loss of agricultural lands and ensuring their permanent preservation. The most obvious reward is the availability of fresh, locally grown produce. Agriculture contributes to local economies directly through sales, job creation, support services and businesses.

Well-managed agricultural land also supplies important non-market goods and services. Farmlands provide food and cover for wildlife, help control flooding, protect wetlands and watershed, maintain air quality, and provide valuable open space.

Preservation of farmland maintains scenic, cultural and historic landscapes. These managed farmlands provide beautiful views, create identifiable and unique community character, and add to the quality of life of a community. These lands are our legacy, both as we look back to the past and as we consider what we have of value to pass on to future generations.

Value of Santa Clara County Agriculture

The market value of Santa Clara County's agricultural produce in 2005 totaled over \$252 million. Santa Clara County is ranked 30th out of 58 counties in the state based on the value of its agriculture production. Santa Clara county's top five crops by value include:

Nursery Crops	\$86,278,000
Mushrooms	\$58,081,000
Peppers, Bell	\$9,142,000
Flowers, Cut	\$8,639,000
Steers and Heifers	\$8,306,000

Vegetable crops (including all types) valued at \$125 million, account for approximately half of the total gross value of Santa Clara county's agriculture.